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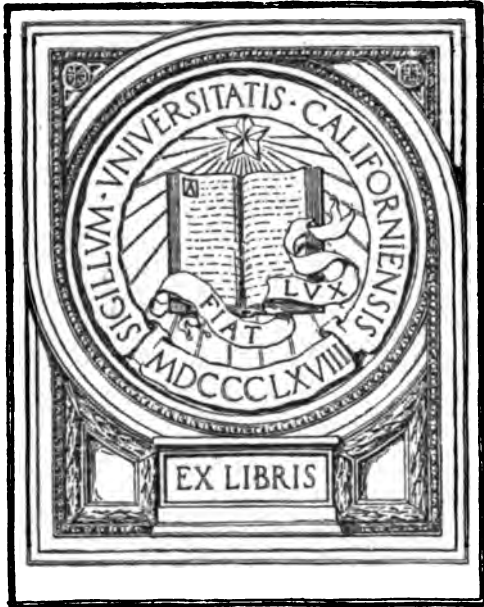
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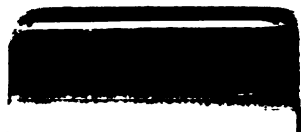
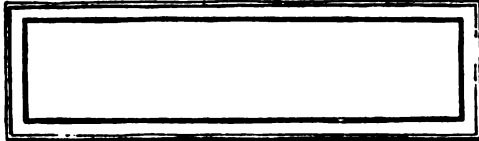
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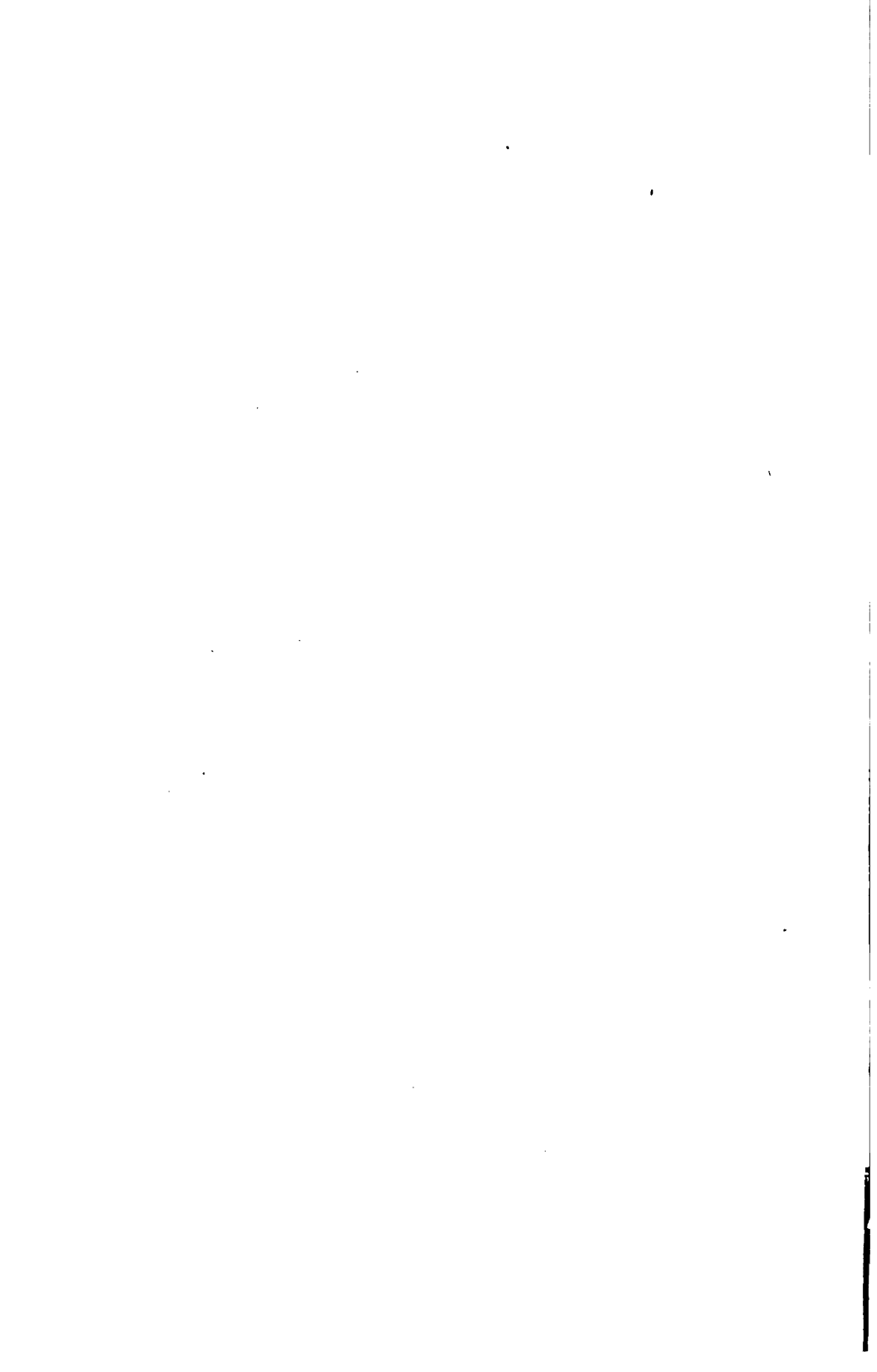
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NAVAL COURTS MARTIAL

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UNIV. OF
CALIFORNIA

TO VIND
ANTHONY



The taking of the *Crescent*

NAVAL COURTS MARTIAL

by
DAVID HANNAY

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1914

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PREFACE

THE purpose of this book is to make, from the reports of Courts Martial, some picture of what the old Navy was down to the end of the Napoleonic wars. Those reports are preserved in the Admiralty papers, Secretary's In-Letters beginning with volume 5253 and the year 1680, on to volume 5452 and the year 1815 inclusive. The series does not stop at volume 5452, and there was of course no sudden change in the Navy at the beginning of 1816. Yet the signing of the second Peace of Paris marks the end of an epoch, and from it is to be dated the beginning of a new world.

Earlier statements of the mere fact that trials had been held and sentences given are to be found in State Papers, and such journals of officers of the time as have been preserved. But these notices are of no value for our purpose. We need the testimony of the witnesses given in what at least professes to be their own words. For years after the Court was established no care was taken to preserve the records of its proceedings. That this was the case is shown not only by the absence of documents, but from the terms of an order in Council of the 6th February, 167 $\frac{1}{2}$. The Duke of York had then been driven from office by the Test Act of 1673, and the King was making an effort

to govern his Navy with the help of a Council. A Captain Stout had accused his Lieutenant, Butler, of disrespect, and the case was referred to the King. An order was given that in future the minutes of the evidence were to be transmitted with the sentence*.

King Charles II, as the loyal Dartmouth told Pepys, was good at seeing what ought to be done, and at giving directions, but was negligent in enforcing obedience. This order was no better observed than many others. When the collection of Court Martial papers begins in 1680, the earliest consist of statements of sentences passed, transmitted from the squadron stationed in the Straits—by which was then meant the whole western Mediterranean. The eastern was known in the language of seamen as the Arches, short for Archipelago, and the Levant. Arthur Herbert, the Lord Torrington of Beachy Head, was in command. The minutes of the evidence began to be given after James II had inherited the throne.

It was long before the reports began to be drawn up in any regular form. The Deputy Judge Advocate, who was commonly the Admiral's secretary, or a purser, but was occasionally a chaplain, and to whom the duty fell, discharged it as he thought fit. He did not always in earlier years think it necessary to give the names, or state the number, of the officers forming the Court. Sometimes the charge is not definitely stated. The signatures of the members of the Court to the sentence are not rarely lacking. The documents are of all sizes, ranging from scraps of paper three inches square to foolscap sheets. The

* *Naval Collection MSS*, Vol. 2, p. 116. Admiralty.

handwriting is now and then beautiful, but it too often varies from bad attempts to write the Court hand to vile scrawls. It will easily be believed that the officers who drew up these papers displayed all the indifference of their generation to consistency in spelling proper names. One form appears in the list of members of the Court written by the Deputy Judge Advocate or his clerk. The man himself uses another when he signs the sentence. The Captain "Cole" of the list, writes himself "Coall." Shovell who generally, but as it seems to me not always, signs Clowdisley Shovell, is written down "Clously" in the list. In both cases the spelling was phonetic. But this is a small matter. If it were not for the Deputy Judge Advocate, we would often be at a loss to know who signed the sentence. The signatures show exactly what Sir Horace Mann meant when he said that a note sent him by Admiral Mathews was written with "the claw of a great lobster" for a pen. What we are to deduce from that touching the education and breeding of the old sea officers is not so clear. After the Revolution of 1688, when the Navy rose suddenly from the thirty-eight ships put in commission by King James, to seventy-four, and then again doubled with equal speed, it was found necessary to call in numbers of merchant skippers. Some of them no doubt were ignorant men, though they might also be of gentle birth. The younger sons of the County families of good pedigree were not seldom bound apprentices in the merchant service. But a good deal of this appearance of rough illiteracy may well have been mere affectation. Gentlemen took up with a humour of tarpaulin airs, and some of the signatures have

a look of deliberate extravagance. What I say here applies mainly to the early volumes and becomes less and less true as the series goes on.

For the procedure of the first times, we have the guidance of Mr Philip Foster who wrote to the Admiralty from Doctors Commons on the 12th February, 1688. He had acted (at some loss to himself he says) as Judge Advocate in the Channel from June to October 1689. "In which office I have been as exact in making of informations and depositions as the proceedings of a Court Martial will permit. The witnesses being examined sometimes *vivâ voce* as well as in script; there can be no full transmission of the Depositions. The sentences are drawn up conformable to the Civil and Maritime Laws." Mr Foster was stating a counsel of perfection. The reports conform but loosely to the obligation to give Authority, Time and Place, the names of the Parties between whom the matter was in dispute and the matter of Fact, though they give the Condemnation.

The whole mass of the papers is large. The two hundred volumes from 5253 to 5452 must contain from 12,000 to 15,000 cases. A complete analysis of them would fill several volumes the size of this. The Index and Summaries of cases from 1755 to 1805 prepared for the Admiralty fill six folios of MS. The entries are written large and widely spaced, but even with firm compression they would fill half the number. No useful purpose would be served if we aimed at completeness. Much may safely be neglected as being of the nature of mere repetition. It is for instance quite enough to note once and for all that cases of embezzlement and desertion were frequent—and no less

monotonously dull. And there is one class of case of which I shall not be expected to speak at all. To ignore the fact that it is there would be dishonest. To dwell on it would be an outrage.

It is easy to know what to do with these parts of our subject. The difficulty begins when a selection has to be made from Courts Martial which deal with matters which are not insignificant, and do not defy quotation. The course I have decided to adopt, is to give a preference to what illustrates the life and character of all ranks. It follows that what may be called "Military Court Martial," the trials of Admirals for mishandling their fleets, or of Captains for not coming roundly into their stations in battle, will hold a very subordinate place in this book. They are commonly in print and easily accessible, for the simple reason that the public interest in "Naval miscarriages" was eager and angry. They will not be ignored, but I shall in all cases lean towards taking from them only what illustrates the ways, the character, the morality, and the language of the whole seafaring body. To me and for my purpose cases of "mutinous assembly," of desertion complicated by the "piratical seizure" of a ship's boat, or murder, in a guard boat, on the lower deck, or in the wardroom, are more illuminative than the inquiry whether Byng did or did not bring his line well into action. We have more to learn from Courts Martial which show to what extent the British Navy recruited foreigners, and compelled the service of prisoners of war, than from the unending (and I fear we must add uncandid) inquiry into the conduct of Gambier in the Basque Roads. I have to give my sincere thanks to Captain Charles N. Robinson, R.N.,

to Mr Perrin, Librarian of the Admiralty, and to the officials of the Record Office for much kind help, and also to Messrs Parker of Whitcomb Street for the loan of the following plates: the *Taking of the "Crescent,"* the *Portrait of Richard Parker,* the *Revolt of the Fleet,* the *Execution of Richard Parker,* the *Revenue Cutter* and the *Portrait of Sir Isaac Coffin.*

D. H.

20 May, 1914.

CONTENTS

CHAP.	PAGE
PREFACE	v
INTRODUCTION	xiii
I. THE NAVY IN 1688	1
II. DISCIPLINE	39
III. IMPRESSMENT, PLUNDER AND FALSE MUSTERS	73
IV. MUTINY	115
V. MURDER	142
VI. IN ACTION AND SHIPWRECK	162
CONCLUSION	192
INDEX	207

LIST OF PLATES

The taking of the <i>Crescent</i>	<i>Frontispiece</i>
Page of text and signatures, from report of Court Martial, 1694	<i>between pp. xxxiv and xxxv</i>
Richard Parker	<i>to face page 22</i>
The Revolt of the Fleet	<i>between pp. 114 and 115</i>
The Execution of Richard Parker	<i>to face page 140</i>
A Revenue Cutter.	" " 162
Sir Isaac Coffin	" " 198

INTRODUCTION

THE Naval Court Martial was created as a necessary part of the organization of the Royal Navy. The way was prepared by Parliament, the Council of State and the Protector during the Civil War and the Commonwealth. The work was completed in all essentials during the first years of the Restoration.

The origins of the Navy, its government, and its tribunal lie far back in the history of England and do not belong to our subject. The development of a pure fighting ship, the proved inferiority of vessels built for trade when used for military purposes, and the growth of national wealth which permitted of the maintenance of a permanent fleet, combined in the end to compel a separation in character and function between the military and the trading or fishing navies. The process was complete when Charles II returned from exile in the twelfth year of his nominal reign. The " *navigium regis* " which had once been composed of all the ships and shipmen of the realm, was finally differentiated into the military navy and the merchant and fishing navies. The military became emphatically the Royal Navy.

From the twelfth century we can see the officials who governed the Royal Navy—that is to say the whole body of the King's seafaring subjects when

engaged in their proper functions whether in peace or in war. They were known by many names and they were administrators whose judicial character was much more emphasized than their military. They were not seamen and they might be churchmen. But whether they were "ductores et gubernatores totius navigii regis," or "justiciarii navigii regis" or "constabularii" or "Captains and Admirals" on this or that coast, or of this or that fleet, or admirals of all the fleets, they governed the seamen who were "a people by themselves" by the civil law and the "custom of the sea" as embodied in the "Laws of Oleron" which are a collection of "customs." The title of admiral does not appear till the fourteenth century, and then in combination with "captain." The Lord High Admiral became a permanent officer of state in the fifteenth century. It is not necessary to say anything here of the process by which his general jurisdiction was transferred to the royal courts. But he had a very direct connection with Court Martial, and that we cannot ignore.

In so far as the admiral was a commander of an armed force in war, he performed the functions which on land were discharged by the Constable and the Marshal. He "stayed" ships to serve the King, he levied the mariners to form the crews, he put his fighting men into them, and he both pronounced and applied the "laws of war" by himself, or by his delegates. From him come the "articles of war," and the Court Martial. The law he promulgated and enforced was what its purpose and the nature of the work to be done dictated. Sacrilegious acts and blasphemous words were forbidden by a religious age. Gambling

and quarrelling were incompatible with discipline, and contrary to the very nature of a force collected to fight an enemy, for they led to murder, and neglect of duty. Cowardice, or self assertion in presence of the enemy, were all alike to be suppressed. The man who confusedly rushed at the enemy might be less contemptible than the poltroon, but he was destructive to orderly fighting. The substance of all laws of war must always have been the same, whoever promulgated them. But the point at present is that these laws were pronounced by each admiral for his own command, and were based on his authority. And "Admiral" does not mean only the Lord High Admiral, but any man commanding a fleet for the sovereign, or with the royal approval and licence, even when engaged on a private venture of exploration or trade. Hawkins when he sailed on a slave smuggling venture to the Spanish Main, and Raleigh when he left home on his last cruise, drew up "laws" for their commands, precisely as did Lord Wimbledon when he was commissioned by King Charles I to lead the attack on Cadiz in 1625.

When we ask by what process this authority was enforced we enter a very obscure region. And inevitably so, for we are dealing with a "customary" thing which had not been fixed by statute. When our subject is the origin of Naval Court Martial we cannot learn anything from the trial on shore of prisoners charged with offences committed within the jurisdiction of the Admiral. They were held, at any rate after the reign of Henry VIII, by the King's Judges and by the process of the English law. Nor can we go by such examples as the trial and execution of Doughty at Port Julian during Drake's voyage round the world,

and the trial of a sailor condemned and hanged for murder at Firando in the Sea of Japan by the officers of the East India Company. In both cases a jury was summoned, but these are not examples of a true Court Martial, held in a royal force, and by royal officers. The proceedings against William Borough who served as second in command with Drake in the cruise on the coast of Spain in 1587 may be taken as an example of what Court Martial meant, or could mean, before it was regulated by statute.

William, brother of the better known Stephen Borough, was a somewhat older man than Drake. He had spent his early years in the hard navigation of the North, in opening the way for English trade to Russia, and in protecting it against pirates. He was a skilled navigator and writer on navigation. In an age when no regular corps of naval officers existed, such a man was naturally recruited for the service of the crown. He was successively Clerk of the Ships and Comptroller of the Navy, and had held important commands at sea. In 1587 he was named Vice-Admiral to Drake, who was sent as the Queen's "Admiral at the Sea"—that is to say Commander-in-chief of a fleet under the authority of the Lord High Admiral—to the south coast of Spain. The force consisted, as was then always the case, of a smaller number of vessels belonging to the Queen (four in all) and of a larger (twelve) owned by merchants of London, and seven small craft. The political object of the expedition was to disturb the ill-directed efforts of Philip II to collect a great armament for the invasion of England. But profit by prize money was an object with the Queen, then as always, and the ships of the London "adventurers,"

i.e. speculators in privateering, were there "on the plundering account."

Sir Francis Drake was at the height of his renown in 1587. His raids on the Spanish Main, his voyage round the world, his success in the expedition to the West Indies in 1585, had marked him out as the man to lead the attack on the Spanish coast. He undertook it with zeal, and he brought with him a number of "followers" whom he trusted. Followers, that is to say men who attached themselves to the fortune of some rising officer and supported him from affection and interest, have ever been a known element in our navy. Borough brought trusty followers with him, and fortunate it was for him that he did.

During the operations Drake behaved to his second in command in a way which Borough, conscious of long and honourable service, found offensive. He showed him no confidence. The custom of the time required a commander-in-chief to hold councils of war and consult his subordinates, and so did the custom of the sea. Councils of war have a bad name, but at a time when there was no code of signals, and therefore no means of giving an order in action except by sending a boat with a message, there was a great advantage in collecting the more important officers before a fight and settling what everyone was expected to do. Drake called his officers together, in order to give himself the appearance of complying with the custom, but he never spoke on service except to his own "followers." He treated Borough with a show of good humour, and the substance of insolent indifference. His Vice-Admiral resented his attitude as hotly as Hood resented the haughty aloofness of Rodney.

At last, when Borough heard that Drake was resolved to attack the castle at Segre near Cape St Vincent, he thought he saw a good opportunity for giving his uncivil superior a lesson. He wrote a long and grave letter of serious expostulation concerning the treatment he had received. The sting of this in truth somewhat pompous epistle lay in a few sentences. Borough told Drake that the taking of Segre would be at best useless, for it could serve no other purpose than to enable him to boast that he had put his foot on the King of Spain's territory, and perhaps to make booty of a few guns. If the castle was garrisoned, as it well might be, the attack might be repulsed. The criticism was perfectly just for Segre was neither a good anchorage nor a port where stores were to be found, nor did it give access to supplies. Even if the fleet had orders to winter on the coast, Segre would have had no value whatever as a "basis of operations." But its truth did not make the criticism more acceptable, and Borough's taunting reference to the vainglory for which Drake was noted was calculated, and was, we cannot but think, intended to sting. Sir Francis was a dangerous man to provoke. He was vindictive, and when offended unscrupulous. He retaliated by displacing Borough and confining him as a prisoner in his ship the *Golden Lion*. One Captain Marchaunt, a "follower" of Drake's, was sent to command the ship.

The crew of the *Golden Lion* were discontented. They complained of lack of rations. There was, too, among them an element of "prime seamen" whom Borough had brought with him. It is clear that these followers of his were angry at the way their patron had

been treated, and there is every reason to believe that the grievance of the men was real, and that they attributed it to the spite of Drake and his followers. All history of mutiny bears testimony to the influence which the "prime seamen" exercised over the less competent members of a crew, which always consisted to a large extent of so-called sailors who were not "sailormen," not, that is to say, men bred to the sea. These true masters of the business, who could go aloft in the storm and the dark, who were the leaders and the salvation of others at all times of peril, were looked up to and obeyed. We may be very sure that Borough's followers worked on the *Golden Lion*, and that it was at their instigation that the whole crew came aft and presented a protest to Marchaunt. They insisted on leaving the fleet and going home at once. The ship was at the time some distance from the flag, and the captain was helpless. Only a dozen of the "gentlemen" in the ship were ready to stand by him, and they, who were always disliked by the sailors as not being of their own "art and mystery," were helpless. Marchaunt was reduced to the rather ignominious necessity of appealing to Borough. He for his part would do nothing, and had the satisfaction of seeing his jailer turned out of the ship. The *Golden Lion* then bore up for England.

Marchaunt now betook himself to Drake's flagship, the *Elizabeth Bonaventure*, and reported to the Admiral. Sir Francis at once summoned "a general court holden for the service of Her Majesty," and composed of all the commanders, chief officers of the soldiers embarked in the squadron, captains and masters. He then called upon Marchaunt to explain how he came to lose the

command of the *Golden Lion*. Marchaunt produced the protest of the crew and told his tale. Then without further delay, Drake pronounced doom. "Although," he said, "I am not doubtful what to do in this case, nor yet want any authority, but myself have from Her Majesty sufficient jurisdiction to correct and punish with all severity as to me in discretion shall be meet according to the quality of the offences all those seditious persons which shall be in the whole fleet, yet for the confidence I have in your discretions, as also to witness our agreement in judgment in all matters, I pray you let me have your several opinions touching this fact which hath been declared in your hearing this day." The "general court" could be in no doubt what it was asked to agree with, for the Admiral, without waiting for an answer, proceeded to pass sentence of death on Borough and all the officers of the *Golden Lion*, and minor penalties on all the crew except the twelve who had offered to support Marchaunt. If any of the members of the court had dissented, they, unless they had been at least a substantial majority and prepared to defend themselves by force, would have been liable to be punished according to their offence as "seditious persons" by virtue of that unlimited authority to inflict all degrees of punishment at his own discretion which Sir Francis claimed to have received from the Queen. They remembered the case of Mr Doughty, and they knew that the *Golden Lion* was now out of reach, and moreover that the case would come before the Queen's Council. There was no dissent. On this occasion, as when he put Doughty to death, Drake did not produce his authority. Raleigh at the end of his life asserted that Drake had no

such powers as he claimed in Doughty's case. It is highly probable that Sir Francis was lying.

Borough took good care that the case should come before the Council. He appealed to Burleigh, and there was a confrontation of the parties at Theobalds. Drake produced a whole string of accusations against Borough, who retorted, at times in scornful terms, and always in a tone of superiority. A committee, including Sir Amyas Paulet, the resolute gentleman who refused to offend against the laws of God and man by murdering the Queen of Scots merely because he was told that Elizabeth would like him to do it, and an Admiralty Judge, was appointed to inquire into the whole case. We do not possess its report if any was made, but the fact that Borough retained his place on the Navy Board and served against the Armada shows that Drake's action was not approved.

What could a committee of shrewd men think of the case put before them? One passage may be quoted from the whole farrago as an example of its quality. The first of the "Further articles" presented against Borough runs:

"First when it pleased our General [*i. e.* Drake] to call together the captains of Her Majesty's ships and the captains of the ships of London, asking every man's advice for our entering Cadiz, the wind being good and diverse fishing boats in sight, Mr Borough's advice and counsel was not to go into Cadiz that night, which if we had not the service had been lost."

Observe that even if the facts were as stated, they only prove that Borough was not of the same opinion as Drake. But it was his case that no council was held, and that the service would have been better performed if it had been executed in a more orderly manner. His answer is effective:

“ This article is confirmed by Sir Francis Drake and 7 witnesses, whereof one was Isaac Marichurch the master of his ship, the rest his followers, but not one of the captains of the Queen's ships, which ought to be heard in that matter (and therefore I do humbly beseech your Honours that they may be examined, and willed to declare the truth touching this article before your Honours). Because the said Master is a man of experience and judgment, whom I hold to be an honest man that feareth God, and such a one as will not altogether be led to swerve from the truth and swear to it, to serve and please affection, I therefore desired your Honours the Commissioners, Sir Amyas Paulet and Mr. Secretary Wolley, that the said Marichurch might be brought to speak before your Honours where I might be present, for that I doubted not to put him in mind that he had overshot himself; whereupon it pleased your Honours to send for him. When he came before your Honours, the article being read and his hand showed, he confessed both. Then he was demanded of the first part, whether the captains of the Queen's ships &c. were called aboard by the General and their advice asked for entering Cadiz. He answered he knew no such matter. It was further demanded of him, touching the second point, whether he heard me counsel or advise the General that we should not bear into the Bay of Cadiz that night. He answered that he would not say it for a thousand pounds. ‘ But,’ quoth he, ‘ I have set my hand only to prove that if we had not gone in that night the service had been lost.’ ”

When we remember how the trial of Raleigh at Winchester was conducted by trained lawyers, including the illustrious Coke, we cannot say that Drake's idea of judicial proceedings was notably outrageous for the time. Yet the story of “ the General Court holden ” in the *Elizabeth Bonaventure* and its consequences do show that what served for Court Martial then and later did not possess the first elements of a real court of justice.

No attempt to provide a regular process was made till the Civil War. The obligation to make good the deficiency was imposed on the Long Parliament by its own act. It had declared that the Martial Courts were unconstitutional. When it abolished a tribunal which could fine a gentleman for calling the swan on a nobleman's crest a goose, it destroyed the only known

machinery for keeping order in an army or a fleet. In 1644 an ordinance for the government of the fleet was drafted by the House of Lords, and was passed by the Commons in the following year. Power to hold Courts Martial was given to a General Council of War. Further powers were given in 1648 and in 1652, and the "Laws of War" were issued, and in 1653 the Admirals and Generals at Sea, Blake, Monk, Desborough and Penn issued their instructions for the formation of Courts Martial in future. They gave flag officers power to hold a court in their respective fleets, or divisions of a fleet, with a "council of war" which must not consist of less than three persons. A sentence which entailed loss of life or limb must be referred to the Admirals and Generals "the criminal being still secured," together with minutes of the evidence and defence to be "enregistered and kept on record" by the "Judge Advocate of the fleet." The Judge Advocate was an officer of the old Admiralty Court, and his presence serves to connect Court Martial with the ancient general jurisdiction of the Admiral. A divisional Court Martial could not cashier a captain without reference to the Admirals and Generals, or a master without the approval of the general of that fleet to which it belonged. Similar powers were vested in the commander of a detachment of not less than three ships. Every captain of a ship belonging to, or in the service of [*i.e.* pressed or hired by] the Commonwealth was empowered to hold a court with his lieutenant, if he had one, his master, master's mates, "clerk of the cheque" [*i.e.* purser], gunner, boatswain, and carpenter, for the trial of offenders belonging to that vessel, subject to the obligation to refer all sentences of life or limb, and for

the cashiering of any commissioned or warrant officer to "the commander of the party (if remote from the fleet) or to the flag commander of the division." These orders of the Admirals and Generals expressly authorize all Courts Martial to try and to punish offences committed "on shore in any place or harbour."

The report of a Ship Court Martial survives among the State Papers of the Protectorate*. The case is of no intrinsic interest. Three sailors of the *Centurion* then fitting out for sea at Harwich stole twenty-five shillings worth of the ship's stores, and with the help of a go-between of the name of Roger Shry sold them to a ferryman Edward Brassington, who acted as receiver of the stolen goods. But if the case is insignificant, we are interested in the Court, its constitution, its procedure, and its sentence. In point of lucidity of arrangement, handwriting, and the very quality of the paper used, the little handful of documents transmitted to the Judge Advocate by Captain Jonas Poole of the *Centurion* in Harwich Water, compares favourably with many of the slovenly scribbles of later times.

The Court sat on board the *Centurion* at Harwich on the 17th December, 1658. Its composition and the order in which the names of the members are written are both noteworthy. They are placed in two columns as follows :

Jonas Poole, Captⁿ
Richard Patton, Mas^{tr}
Robert Whitnall, Pur^{sr}
John Randall, Gunner

James Jennifer, Lieut.
John Withers } Master's
W^m Collins } Mates
Henry Russell, Boatsⁿ
John Jordan, Car^{sr}

* S.P. Dom. CLXXXIV.

The gunner we see stands in the same column as the captain, master, and purser who were "heads of departments." The lieutenant leads the column of mates and subordinate officers. The gunner of the seventeenth century was in fact relatively a more important officer than the gunner of the eighteenth century who held a warrant from the Board of Ordnance. If the age had been one of great development in armament, and of skilled gunnery, he would in all probability have become a commissioned officer, a member of the Ward Room Mess, and "a gentleman of the Quarter deck." He was rather what the gunnery lieutenant of to-day is than what the gunner of later times was and is. It was not without a struggle that he was reduced to the lower status of an officer who was not a gentleman of the quarter-deck.

The sentence passed on the three offenders does nothing to support the supposition that a Ship Court Martial would be more tender to erring members of the crew, than were the Courts Martial composed wholly of commissioned officers of the times after the Restoration. It condemned Jasper Williams, whom it looked upon as the instigator of the theft and the misleader of the others, to receive "30 lashes soundly laid on his bare back in a boat by the ship's side and in public view, and then to be cashiered without a ticket." This meant that he would not receive the pay ticket without which he could not obtain the wages due to him. Samuel Austin and Thomas Norris whom he had led astray were to receive 10 lashes each "at the capstan" in private and in the seclusion of their family, a less shameful punishment than the public correction of Jasper Williams. The Ship's Court Martial exercised

a wider jurisdiction than the Court Martial established by the 13th Charles II. It condemned the ferryman to make restitution to double the value of the stolen goods, and to enter into a bond of £500 for his future honesty. The Court Martial of later times would have had no jurisdiction over Edward Brassington.

The Restoration abolished the Courts Martial of the Commonwealth, if only by the mere fact that it re-established the office of Lord High Admiral in the person of the Duke of York (James II) the King's brother, to whom it had been destined from his infancy by their father. But even if the Restoration had wished to return to the anarchy of the days before the Commonwealth, it could not have done so. In fact, the Duke and his brother were very anxious to regulate the Navy as a great royal force. One of the earliest duties the loyal parliament of the day was called upon to perform was to pass " An Act for establishing articles and orders for the regulation and better government of His Majesty's Navies, Ships of War, and forces at Sea " —the 13th Charles II c. 89 of 1661. We shall be able to judge how far the parliament deserved the severe criticism passed on it by ministerial speakers in 1749 when the Act was revised, for the great haste and little thought with which it did its work, when we know what it put in place of the Courts Martial of the Commonwealth, and their " Laws of war and ordinances of the sea." The article which established the new Court Martial was the 34th, and runs :

" And it is hereby further enacted, that the Lord High Admiral for the time being shall by virtue of this act have full power and authority to grant Commissions to inferior Vice Admirals or Commanders-in-chiefe

of any squadron of ships to call and assemble Court Marshalls consisting of commanders and captains, and no Court Martiall where the pains of death shall be inflicted shall consist of less than five captains at least, the admiral's lieutenant to be as to this purpose esteemed as a captain ; and in no case wherein sentence of death shall pass by virtue of the articles aforesaid or any of them (except in case of mutiny) there shall be execution of such sentence of death without the leave of the Lord High Admiral, if the offence be committed within the Narrow Seas. But in case any of the offences aforesaid be committed on any voyage beyond the Narrow Seas whereupon sentence of death shall be given in pursuance of the aforesaid articles, or of any of them, then execution shall not be done but by the order of the Commander-in-chief of that Fleete or Squadron wherein sentence of death was passed."

A proviso was added in a separate schedule that nothing in the Act should be held to extend the "Power, Right, Jurisdiction, Preheminence, or Authority" of the Lord High Admiral except in the case of such offences as are specified in the Act committed by persons "in actuall service and pay of His Majesty."

Two of the terms used in the 34th clause of the articles of 1661 may mislead a modern reader. The "commander" who is to sit on Courts Martiall with the captains was not the officer of that name, or the "Master and commander" of a small vessel who ranks immediately below the Post-captain. Officers of that rank were not allowed to sit till later. Here "commander" meant flag officer serving in a fleet or squadron under a commander-in-chief. The Admiral's lieutenant was not the second in command, but the flag lieutenant, whose position is assimilated to that of the captain-lieutenant of a regiment, who was a lieutenant commanding the colonel's company. When in the reign of William III Wilmot was commander-in-chief of an expedition to the West Indies, he began by refusing to allow the captain-lieutenant of his military colleague, Colonel Lillingstone, to sit on councils of war.

He was with some trouble forced to allow that the captain-lieutenant stood on the same footing as his own "Admiral's lieutenant."

When we take this article, as we must, together with the schedule, it is obvious that the great persons who shaped the Act had overlooked a contingency which the Commonwealth men had kept in mind. It was that an offence against "Martial Discipline" might be committed by a man in the actual service and pay of the King beyond the jurisdiction of the Lord High Admiral. A sailor who knocked his officer on the head with an oar at high water mark, or assaulted him in a dockyard, or in the streets of a town, could not be tried by Court Martial. He could be brought before the ordinary courts at home, or in a British possession oversea, or if he offended in a foreign country he could be brought home for trial at the Old Bailey, but the Court Martial could not touch him. It was another and a slovenly oversight that no care was taken to limit the number of officers composing the court, nor to direct the way in which the tribunal was to be formed. We cannot fairly blame the authors of the Act for not foreseeing that the office of Lord High Admiral might be in commission and that a pettifogging objection might be taken to the right of the Commissioners to order a Court Martial to be held. But it was a manifest stupidity in them to make the right to order a Court Martial to be held personal to a specially authorized Commander-in-chief. If any officer or man had murdered the Commander-in-chief he might have been brought home and tried by Court Martial, or at the Old Bailey by a bench of judges including the Admiralty Judge, for a murder committed within the jurisdiction

of the Admiral, as Kidd was tried for killing his gunner on the coast of Malabar, but he would have destroyed the only authority empowered to try him there and then. They might have reflected that an officer serving abroad with a numerous fleet under his orders would often have occasion to detach a part of it for a long period, or that he might be killed in action, or die, or even only be compelled to resign his command by ill health. This case actually arose when Vernon gave up his command in the West Indies on the ground of health. His successor Sir Challoner Ogle was left for a whole year without power to hold a Court Martial. And it occurred in less conspicuous ways after the deaths of Wilmot, Neville and Hozier. The proviso that the authority of Court Martial should extend only to those in "actual service and pay" was no doubt meant to debar a court from trying persons not belonging to the Navy, but it had a consequence which cannot have been designed. In 1661 there was no half pay list. Officers and men alike then belonged to the Navy only during the commission under which they served. When half pay was established the words were understood to be equivalent to "active service and full pay." Therefore officers on half pay, though actually in the King's service and in the receipt of pay, were not subject to the Articles of War. But an officer on half pay could be tried by Court Martial for acts committed while he was on full pay. By the rule of the service pay ceased when a ship was taken or wrecked. Therefore the Admiralty had no power to try any of the crew—neither the commissioned officers, who would be entitled to half pay, nor the petty officers and men, who being no longer entitled to pay had no legal connection

with the navy*—for acts committed after the capture or wreck.

To every rule there are exceptions, and there are to this. Some naval men in the pay and service of the King were not subject to the Articles of War. Some seafaring men who received no pay from the King were so subject. Officers employed on the civil side of the government of the Navy—this is to say members of the Navy Board or Commissioners of Dockyards—were not liable to be tried by Court Martial though in service and pay. Yet the officers and men of privateers, who indeed sailed with a commission from the " Lord High Admiral " as represented by the Admiralty, were for the better maintenance of discipline declared to be subject to the Articles of War and liable to trial by Court Martial. And so were the officers and men of ships belonging to the East India Company.

Experience, too, showed that the limitation of the jurisdiction of a Court Martial to offences specified in the Act of 1661 and the clumsy wording of the clauses, left it without power to deal with some forms of violence and fraud, while the constitution of the Court was found to be open to a very serious objection. During a period of nearly ninety years several measures were

* Half pay was introduced by successive steps. It began by a special allowance made to a small list of Flag officers. It was extended to a limited list of captains and lieutenants. It was finally given to all who held commissions from the Admiralty, *i.e.* the lieutenants and upwards, and to some who held warrants, Masters and surgeons, from the Navy Board. Petty officers, including midshipmen and men, did not belong " to the Navy " in the full sense, but only to the ship in which they served during the continuance of the commission. When the ship was paid off they had no claim to half pay, and the Admiralty had no further power over them except the right to impress them when a press was authorized.

passed to correct these errors and omissions. The first was carried in the second year of the reign of William and Mary. An attempt, which cannot be explained except by faction pushed to pure folly, was made to maintain that when the Admiralty was, as was then the case, in commission, the Commissioners appointed to discharge the office of Lord High Admiral had no power to order a Court Martial to be held. This absurd contention would never have been heard of if the purpose had not been to save a noble Lord—namely Torrington, who claimed to be tried by his Peers—from trial by Court Martial for his conduct at Beachy Head. Nothing would ever have been heard of it if the accused had not been a member of the House of Lords, and a party man. An Act was passed to squash the quibble, and the opportunity was taken to impose on all members of a Naval Court the obligation to take an oath to judge truly, and to put the liability of a Peer to be tried by a Court Martial for offences against the articles beyond question.

An Act passed in the first year of the reign of George I “to prevent disturbances by Seamen, and to preserve the Stores belonging to His Majesty’s Navy Royal,” was the first measure intended to increase the power of the authorities to deal with the misdeeds of sailors who happened to be beyond the bounds of the Admiral’s jurisdiction. It gave summary jurisdiction to the Treasurer, Comptroller, Surveyor, Clerk of the Acts, and Commissioners of the Navy (who must not be confounded with the Commissioners of the Admiralty) over sailors in dockyards and at pay offices. The administration of the dockyards and pay offices belonged to the Navy Board. The preamble of the

Act grows eloquent over the "Fightings, Quarrellings and Disturbances," "the turbulency of Seamen," the assaults on superiors and "the Rudeness of the Officers intrusted with his Majesty's stores on Land," who traded on the delay and difficulty of bringing them before "the ordinary Judicatures." The Board acquired the power to fine and imprison. The Act which continued in force down to the nineteenth century erected a new barrier against the extension of the jurisdiction of naval Court Martial. But in 1720 a clause was inserted into an Act dealing with other matters, which authorized a Court Martial to try all who were in actual service and pay, for offences against the Articles of War committed beyond the jurisdiction of the Admiral. No stir was made at the time, but at a later period opposition speakers who were assailing the great consolidating Act of 1749 endeavoured to prove that this extension of the power of Court Martial was a ministerial aggression on the ordinary courts at home and in the colonies, designed, as every sagacious friend of freedom must see, to forward the destruction of our liberties.

Yet we ought not perhaps to be quick to decide that the critics were captious, since the limits imposed on the jurisdiction of naval Court Martial by the Act are not so clearly defined as to be visible without close examination. A distinction between foreign territory and the King's dominions was implied rather than stated in the Acts. Yet it is a clear and a natural one. The Court had jurisdiction over all offences, whether or no they were purely military, which were committed beyond the Admiral's jurisdiction in foreign countries. It had no jurisdiction beyond those limits within the King's dominions except over such offences as were

purely military—desertion, disobedience of orders, mutiny and spying, which were purely offences against the articles of war committed by persons subject to the articles.

The difference can be made clear by a few examples. On the 3rd September, 1789, six seamen of H.M.S. *Ambuscade* were tried by a Court Martial on board the *Aquilon* at Gibraltar for a theft committed in the Lazaretto of Messina. They had been sent there to “be smoked,” that is to say, disinfected by the Sicilian Quarantine authorities. Until they went through that troublesome (and futile) ceremony *pratique* would not be granted. While in the Lazaretto, the Quarantine station, they stole a quantity of velvet partly made up into figured waistcoats. Three of them were condemned to death and the Sicilian owners of the stolen property were compensated. In 1798, when the purser’s steward of the sloop *Fly* ran away with a bundle of clothes belonging to his master, the Court Martial before which he was brought on arrest declared that it had no power to try him for that offence when committed at home. In 1796, Peter Egan, a seaman of H.M.S. *Dictator*, was brought before a Court Martial at Cape Nichola Mole in the island of San Domingo for the murder of a Dutch artillery man at Presqu’ Isle. The Court had first to decide whether Presqu’ Isle was part of His Majesty’s dominions. The Court decided that it was, since possession had been taken in the King’s name. But Presqu’ Isle being in the King’s dominions, and the murder having been committed ashore, the Court decided that Egan must be handed over for trial to the Civil Magistrate.

In 1722 the jurisdiction of naval Court Martial was

still further extended. A clause authorizing it to try captains who were found to have merchandize on board their ships (other than bullion which was often shipped in men-of-war for safety's sake) was inserted in an Act for the better suppression of piracy. The collocation is startling, but the real reason for the insertion of the clause was not that navy captains had played the pirate, but that some of them smuggled or interloped within the charter of the East India and the South Sea Companies.

Step by step, and as the occasion serves, has ever been our rule. Therefore it was but natural that no provision was made for the case of the crew of a shipwrecked vessel who broke away from all subordination, until action was forced on the government in 1746.

While the *Wager*, one of the vessels in Anson's squadron, was being driven ashore by a gale in the Golfo de Peñas on the dangerous coast of southern Chili, a sailor who had already been wrecked in a man-of-war on the Barbary coast, told his comrades that their pay would cease from the moment the ship was wrecked. They would then no longer be subject to the Articles of War. He was right. If Captain David Cheape of the *Wager* had been a man of reasonable tact and temper, he might have kept his command over his men, or at least over the great majority of them. But as the narrative of Admiral Byron, who was then a midshipman in the *Wager*, and who remained loyal to his captain throughout, clearly shows, Cheape was a passionate man of no judgment and of the most brutal selfishness. He endeavoured to dictate and overbear where he could only persuade. He capped a course of stupidities by killing one of his midshipmen in

W. Beckett
Wm. Clavering
J. Powell
J. Foster
The Duke
C. W. M. W. W.
H. M. W. W. W.
W. G. W. W.
R. Edwards
G. W. W. W.
A. W. W. W.

Went Paxton
K. Anderson
John Johnson
Robert Kirkhouse
D. W. W. W.
The Firmans
W. W. W. W.
Thomas Blake
George W. W.
Michael Wilkins

V. B. W. W.
J. W. W.

Richard
Edw. W. W.
J. W. W.
John W. W.
Hon. W. W.
Robt. W. W.
Ed. W. W.
Wm. W. W.
Wm. W. W.
and W. W.



circumstances which made the act a vile murder. The men and several of the officers broke away from him altogether, drove him and the few who stood by him off, built boats out of the wreck, and made their way through the Straits of Magellan to the Spanish settlements on the River Plate. No finer story of handiness, hardihood, and indomitable resolution stands to the credit of the British seaman than this wonderful voyage. None the less, these splendid sinners had deserted Cheape and the few who stood for honour by him, and it was impossible to bring them to trial. They had ceased to belong to the Navy when the *Wager* struck the rocks, and were under no legal obligation either to obey Captain Cheape, or to bring him and his faithful few away with them. It had become absolutely necessary to do at last what the interests of discipline and common sense ought to have dictated long before. An Act for regulating proceedings in Court Martial was passed in 1746. Among other provisions it made all shipwrecked officers and men subject to the Articles of War until a Court of Inquiry or Court Martial was held on the loss, and it secured them their wages up to that date if their conduct had been good. Therefore it is that a captain who is condemned for the loss of a ship can be dismissed from the command of a vessel which has been at the bottom of the sea, or lying in fragments on the rocks for months—an apparent absurdity which covers essential good sense. His right to command, and the obligation of his subordinates to obey, is based on the fact that he is captain of the ship and they are the crew. They remain on that footing to one another till his right to give orders is dissolved by authority.

In the meantime it had become continually more certain that the whole system of Court Martial must be reformed. The Act of 1661 made no rule as to the formation of the court except that no sentence of death could be passed by one of less than five members. The Commander-in-chief of a fleet or squadron is told that he can form a Court of Commanders (Flag officers) and Captains. Nothing in the Act prevented him from packing the court with his own followers. By custom indeed it was made the practice that a Court Martial should be assimilated to a Council of War. When the flag was hoisted all the officers entitled to attend a general Council of War, to wit the "Flagmen" and the Post-Captains, could attend. The Court, as a matter of course, was often of unwieldy size. On the 27th April, 1696, for instance, a Court Martial of no less than four flag officers and thirty-six captains was held on board the *Queen* in the Downs, to hear a trumpery case of embezzlement of stores. The size of the Court was regulated by the size of the fleet. But this restriction was more apparent than real. It was always in the power of a Commander-in-chief to order away on service captains whom he could not trust to show themselves docile, and therefore he could, in fact, pack the court. Then he was at all times both accuser and judge. The openings for abuse were obvious, and it was notorious that there were abuses. Naval Courts Martial had in truth an indifferent reputation from the beginning. In 1673 Prince Rupert had complained of their partiality*.

* My authority for Rupert's opinion is *Miscellanies*, Vol. XIII, Corbett's Collections in the Admiralty Library. I have not been able to find Rupert's own words.

In 1694 an Act for enforcing " Better Discipline in their Majesty's Navy " was passed by the government of William and Mary. It provided that all offences against the naval discipline act of Charles II might be tried at the King's Bench, or by Justices of Oyer and Terminer, and if committed out of the realm could be " alleged and laid " in any country. The operation of the Act was limited to three years and it was not renewed.

The scandalous laxity of the Court in some cases was painfully contrasted with its ferocity in others. Moreover experience had shown that there were gross kinds of misconduct for which no penalty could be imposed. For instance, it was a very usual thing in the heyday of eighteenth century jobbery for a naval captain to " lend " sailors to merchant ships. The men liked the practice well enough, for in merchant ships they got, in war time, more money, and in peace though the pay was the same, they got it quicker. The rule in the Navy was that pay was given at the end of the commission. Meanwhile the captain drew their pay and the money value of their rations. Cases had been known in which a captain had " lent " as many as 100 men out of a crew of 120. This was the world wide sin known as keeping false musters, but it could not be punished under the Act of 1664. Enough has been said to show why the conviction that Court Martial must be overhauled was forced on the minds of the ministry of the day. In 1748 an Act was passed to reinforce and extend the Act of 1746. The two contained much the same provisions as to the constitution of Court Martial as the Act of 1749.

The naval reform of that year was carried on parallel

to a considerable change in the " Mutiny Act " of the army. They had one feature in common which may be briefly noticed. They proposed, it is said at the instigation of the Duke of Cumberland, to subject half pay officers to the Articles of War. A strongly worded petition against the proposal was presented on behalf of the naval officers by Sir John Norris, Sir Peter Warren and 217 captains. Ministers who had the support of the elder Pitt, then paymaster-general of the forces, began by insisting on their proposal, but the unpopularity of the innovation was so great, and the anger it aroused so vehement, that in the end they dropped the clause from the Navy Bill.

The Act, of which the full title is " An Act for amending, explaining and reducing into one Act of Parliament the Laws relating to the Government of His Majesty's ships, vessels, and forces by Sea " (22 George II), provided that the right to order a Court Martial to be held should belong to every Commander-in-chief, whether he was originally appointed or had succeeded by the death or resignation of his superior ; that he could delegate the authority to the commander of a detached squadron ; that if five ships met in a foreign port the captains could hold a Court Martial without special authority, and the senior should preside ; that no Commander-in-chief of more than five ships should preside, but either the second, or third in command ; that if the second in command was " improper " then the Admiralty could appoint the third to preside ; that the Admiralty could appoint any of the three, first, second, or third, to preside in any port of Great Britain or Ireland, but could pick the officers who were to form the court ; that no court should consist of less than five

or more than thirteen officers ; that officers of less rank than post-captain could sit if the number of post-captains was not less than three or more than five ; that the members of the court must remain on board, Sundays excepted, till the trial was finished ; that the court appointed its judge advocate ; that the decision should be by a majority, but must be given as by the whole court ; and that no member should reveal what passed while the court was sitting in secret. Although the Admiralty was forbidden to pick the court it often occurred that officers were specially sent down from London to sit on Court Martial when there was reason to suppose that there would not be a sufficient number of officers on the spot.

Something must be said in general terms of the law administered by the Court Martial.

The codes promulgated by the State within the period covered by this volume are " The Laws of War and Ordinances " of 1652, the " Articles of War " of 1661, and those of 1749, the works of the Commonwealth, the governments of Charles II and of George II. Since they have all three the same purpose and deal with the same matters, they are of necessity very similar to one another. With few exceptions the Articles of 1661 repeat the Laws of 1652. The differences are only in wording and order. It is to be noted that the Laws of 1652 do contain a severe prohibition of the evil practice of keeping false musters, which is lacking in the Articles of 1661. In spite of the lack of a special clause in the articles of Charles II this offence did not always pass unpunished. Cases occur in which captains were subjected to penalties by sentence of a Court Martial under the wide 33rd Article, which provides that all

misdemeanours not specified in other articles can be punished according to "the custom of the Sea."

As the Laws and Ordinances of the Commonwealth were in force for eight years only, and were almost wholly incorporated in the Act of Charles II, we need say no more about them. And it will be convenient to place the substances of the two sets of articles under which the Navy was to be henceforth governed, side by side.

The asterisks mark the articles taken from the Laws of 1652.

Articles of 1661.	Articles of 1749.
*1. Enjoins the performance of daily worship.	1. The same.
*2. Forbids words or actions "in derogation of God's honour and corruption of good manners."	2. The same.
*3. Forbids communication with enemies or rebels.	3. The same.
*4. The receipt of any letter or message from enemy or rebel to be reported to superior officers.	4. The same.
*5. No relief to be given to enemy or rebel.	5. Provides for punishment of spies.
*6. The papers of all prizes to be carefully preserved.	6. Repeats number 5 of Articles of 1661.
*7. Prizes not to be pillaged but the captors can take any goods other than "arms, ammunition, tackle, furniture, or stores" which they find on or above the gun-deck.	7. Repeats number 6 of Articles of 1661.
*8. Forbids embezzlement of furniture or tackle of ship.	8. No goods to be taken from a prize except in case of necessity and for the use of H.M ships till she is condemned by Admiralty Court.

Articles of 1661.

Articles of 1749.

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| <p>*9. The crew of a captured ship are not to be stripped of their clothes unless they resist. [<i>This article, taken from the Laws of 1652, which appeared to justify the pillage of a "gallant enemy" was vigorously condemned by ministerial speakers in 1749. They declared it had never been acted on—which was to the honour of British seamen but not of the legislators of 1661.</i>]</p> | <p>9. Forbids all ill-treatment of prisoners of war.</p> |
| <p>*10. Every captain who in action fails to encourage his crew and does cry for quarter, to be punished by death, or in such other way as the Court Martial shall decide.</p> | <p>10. Subjects all officers of every rank who shall treacherously or cowardly yield or cry for quarter, to the pain of death without alternative.</p> |
| <p>*11. Orders all men to obey command in attacking the enemy.</p> | <p>11. The same in substance.</p> |
| <p>*12. Whoever holds back in action to be punished by death or in other way at discretion of the Court.</p> | <p>12. The same in substance, but takes away the discretion of the Court as to alternative to death.</p> |
| <p>*13. Condemns officer commanding a convoy who does not fight in defence of his charge to death.</p> | <p>13. Condemns all officers who fail to pursue an enemy or relieve a known friend in sight to death.</p> |
| <p>*14. The same as No. 13 in articles of 1749 but allows alternative to death.</p> | <p>14. Condemns all who hang back in action "upon pretence of arrears of wages" to death or other punishment the Court thinks fit.</p> |
| <p>15. All discouragement of crew in action is forbidden.</p> | <p>15. Desertion to the enemy and running away with ship to be punished by death.</p> |

Articles of 1661.

- *16. All who betray trust or turn rebel to be punished by death.
- 17. Assimilates desertion to No. 16.
- *18. All spies, whether in King's service or not, to be punished by death.
- *19. The use of seditious words forbidden.
- *20. Nor conceal the use of by others.
- *21. No man to quarrel with or strike superior officer.
- *22. The same as No. 21 in Articles of 1749.
- *23. No man to fight nor provoke another to fight in private quarrel.
- *24. Waste of powder and shot forbidden.
- *25. Negligent navigation forbidden.

Articles of 1749.

- 16. Deserting and enticing to desert to be punished by death, and the entertainment of a deserter from another man-of-war by any captain to be punished by cashiering.
- 17. Punishes by death or at discretion of Court, and to payment of damages, all officers and men who fail to defend, who neglect or ill use ships and crews of merchant ships under convoy.
- 18. Forbids all captains, under pain of cashiering and being declared incapable of serving, to ship goods other than bullion or jewels, and except on the receipt of orders from Admiralty.
- 19. The same in substance but more detail.
- 20. The same in substance.
- 21. Whoever thinks he has cause to complain of the quality of his rations may refer grievance to his superior, but he must not make it an excuse for a disturbance.
- 22. Forbids the striking of a superior officer, or disobedience to lawful command.
- 23. The same.
- 24. The same.
- 25. The unlawful burning of any vessel or tackle not belonging to an enemy forbidden.

INTRODUCTION

xliii

Articles of 1661.

- *26. The same as No. 25 in Articles of 1749.
- *27. Sleeping on watch forbidden.
- *28. Wilful murder forbidden.
- *29. Robbery forbidden.
- *30. The Provost Martial is not to refuse to take charge of a prisoner, nor to allow one to escape.
- *31. All officers and seamen to do their utmost to apprehend offenders.
- 32. Unnatural offences to be punished by death "without mercy."
- *33. All faults and misdemeanours not specified above to be punished by the custom of the sea.
- 34. Establishes Court Martial and is quoted above.

Articles of 1749.

- 26. The same as No. 25 in Articles of 1661.
- 27. The same.
- 28. The same.
- 29. Unnatural offences to be punished by death.
- 30. Robbery forbidden.
- 31. The keeping of false musters to be punished by cashiering.
- 32. Repeats and combines Nos. 30 and 31 of Articles of 1661.
- 33. Any officer convicted by Court Martial of "scandalous, infamous, cruel, oppressive, or fraudulent" conduct to be cashiered.
- 34. Mutiny, desertion, or disobedience, by any officer or man in full pay and active service, committed on shore to be punished as if committed at sea.
- 35. Any offence against Articles of War committed on shore by officer or man on full pay and active service to be punished as if committed at sea.
- 36. All crimes not capital and not specified in these articles to be dealt with according to the custom of the sea.

These Articles—need it be added?—bristle with the pain of death, but I have noted the penalty only where there was a particular reason which will appear when we come to the different trials. It must not, of course, be forgotten that the Articles have at all times been supported by regulations issued by the Lord High Admiral, or the Admiralty, or by the Commanders-in-chief of fleets. In the 19th year of George III, 1779, an Act was passed to authorize a lesser penalty than death for offences against articles 10 and 12, and to exempt members of Court Martial from the obligation to remain on board the ship in which the trial was held until the proceedings were completed.

It seems natural to suppose that an offence committed against the Articles of War by a person subject to them, and within the limits of the admiral's jurisdiction, would always be tried by Court Martial. But this has not been, and is not the case. The jurisdiction of Court Martial has always been concurrent with that of the ordinary courts. A man cannot be tried for the same offence by both, but the question which is to try him may be one of "convenience and discretion." The guiding rule is simple. An offence which by its nature was wholly one against the Articles of War and discipline, sleeping on watch, for instance, or disobedience to orders, or mutiny with or without murder, would go before a Court Martial. When it was also a felony—murder, manslaughter, robbery, or fraud—and was committed within the limits of the jurisdiction of the common or municipal law, then it might be tried by the ordinary courts. In this country the martial courts have always been regarded with a certain jealousy. The right of the ordinary courts to demand the

surrender to them of a prisoner accused of felony has been, and is, well established. The question has never been the right of the ordinary court, but the limit in place of its jurisdiction.

“ The great and common clamour ” raised in the reign of Richard II against the tendency of the Admiral and his deputies to “ accroach to themselves greater authority than belongeth to their office ” led to the passing of two Acts (the 13th Ric. II. St. I. c. 5 and the 15th Ric. II. c. III.), which laid down the limits of their jurisdiction. By the second of these Acts “ Murder and mehaim ” when committed on ships below the bridges of great rivers, or below low water mark, were cognizable by the Admiral. But a saving clause was added to preserve the “ liberties and franchises ” of all Lords, Cities and Boroughs.

When, for instance, Captain Samuel Goodere of H.M.S. *Ruby* lying in King Road, Bristol, in 1741, kidnapped his elder brother, Sir John Dineley Goodere, imprisoned him in the purser’s cabin, and caused him to be strangled by two of the crew, while he stood outside the cabin himself, sword in hand, to prevent interruption, he offended against the 28th Article of War. But he was not tried by Court Martial. There was no proposal that he should be. The Admiralty did indeed think of bringing him to be tried at an Admiralty Session at the Old Bailey for a crime committed within the jurisdiction of the Admiral. But King Road lies within the “ County of Bristol.” The Bristol men were very tenacious of their great and ancient liberties and franchises. Their Recorder, Michael Foster (who was afterwards Sir Michael Foster of the King’s Bench), to whom the question of jurisdiction was referred,

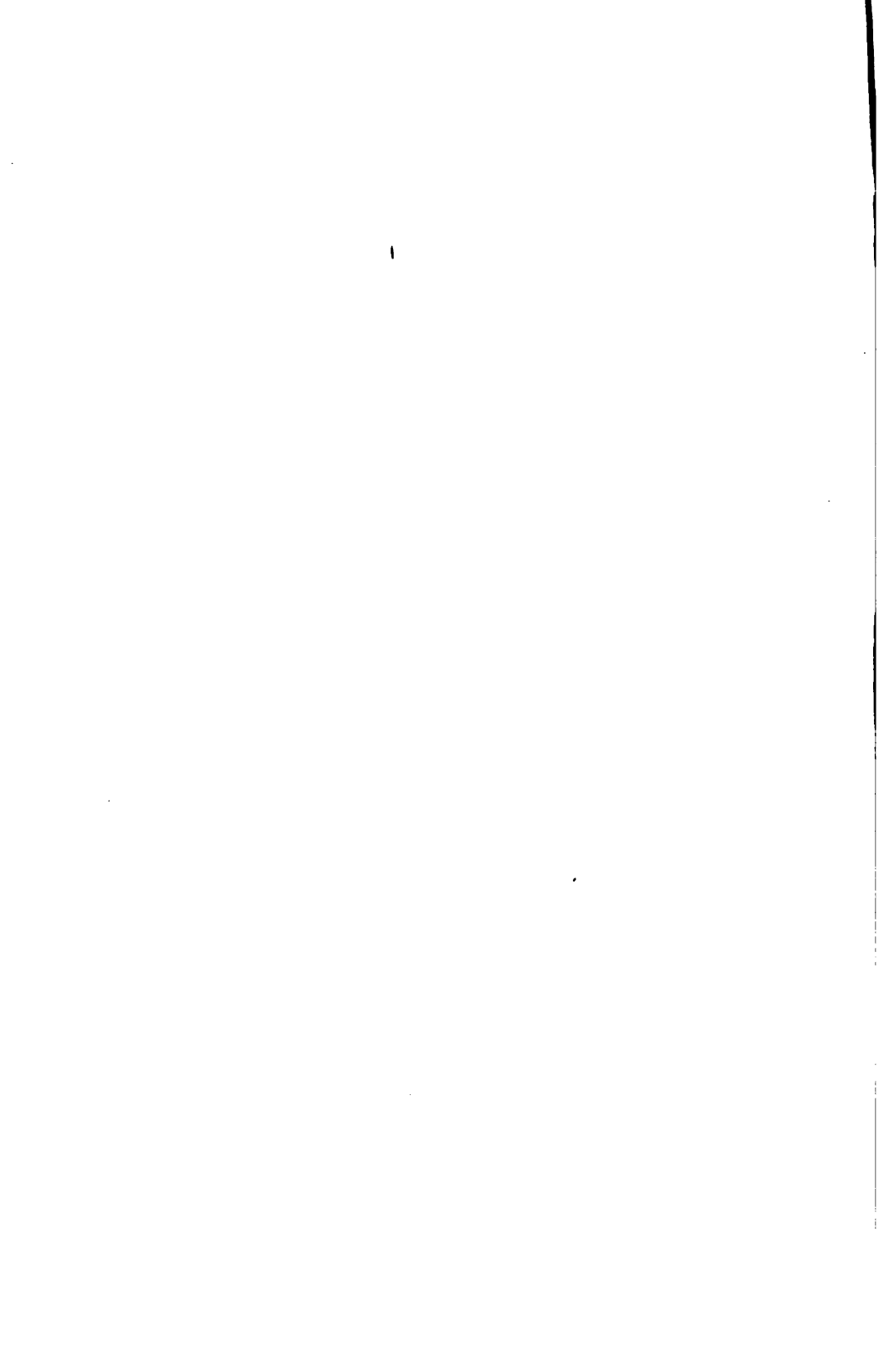
argued that the case was covered by the saving clause in the Act of Richard II. Goodere and his two sailors were sentenced to death at the Bristol Sessions, and were hanged together.

Yet in 1779, when a midshipman of the name of William Kirke murdered his mother on board the *Alexander* at Portsmouth, he was tried and condemned by Court Martial and executed on the sentence.

In this case the victim was not in the King's service, but even when he was, the offence might be tried by "the civil magistrate" unless the murder was committed in the course of a mutiny. Some confusion and disputes as to jurisdiction arose when the injury was given outside of municipal waters, but the injured person died on shore; or when the injury was inflicted in municipal waters or ashore and the death occurred at sea. By an Act passed in the second year of the reign of George II it was settled that in either case the trial was to be before the courts on shore, and not by Court Martial. In 1782 Lieutenant Osmond of the *Swallow* sloop, then lying at Spithead, killed a sailor named Richard Tucker alongside the ship by running him through the body. Tucker was taken to Haslar Hospital and died there. The Admiralty were disposed to claim the right to try Osmond. But the Attorney-General, Kenyon, advised them that as the man had died at Haslar the case must be tried at "county gaol delivery" or "Admiralty Session." The Admiralty was not quite consistent in its view. In 1778 a sailor of the *Foudroyant*, then at Plymouth, hurt a messmate in a fight, and the injured man was found dead next morning. Admiral Amherst applied to the Admiralty for instructions and was told to hand

the accused over "to the civil magistrate." In 1783 Sir Thomas Pye, Commander-in-chief at Portsmouth, was rebuked for taking that course. Richard Davis, an acting midshipman of the *Eurydice*, stabbed another midshipman, J. L. Palmer, and killed him. Pye sent the body ashore to be viewed by a coroner's jury at Gosport. The jury found wilful murder and Davis was handed over to be tried ashore. The Admiral was told that he had done wrong because the case was "cognizable by the Admiralty." There could be no question that a murder committed on a man-of-war on a foreign station, or in any waters in the course of a mutiny, was to be tried by Court Martial. Apart from mutiny the usual course has been to leave the prisoner to the ordinary courts when the felony was of the graver order, but to deal with smaller offenders by Court Martial*. It has always been understood that if the "Civil Magistrate" claimed the prisoner he must be handed over for trial at the Assizes.

* For the perfected practice as it is to-day see *Manual of Naval Law*, Stephens, Gifford and Smith, 1812, pp. 123, 126.



CHAPTER I

THE NAVY IN 1688

What do the officers and men of the Royal Navy look like when we first see them by the light of Court Martial documents at about the time of the Revolution of 1688 ?

The first we see in 1680 is that three sailors of the *Hampshire* were condemned on Herbert's flagship, the *Bristol*, in Cadiz Bay for disobedience to the orders of the master, and that the sentence was that they should draw lots and that he on whom the lot fell should receive fifty lashes on his bare back with a cat o' nine tails. Then at Tangier Thomas Woodgreen is sentenced to receive ten lashes alongside the *Bristol* and five beside every other ship in the squadron, a paper declaring his fault was to be hung round his neck, and he was to be towed ashore at the stern of a boat, for scandalously and falsely accusing his captain Richard Dickenson (who by the way sat as member of the Court) of cowardice in action. At the same place and on the same day, Mr Anthony Hastings, lieutenant of the *James Galley*, was acquitted of the murder of Mr Nathaniel Ludlow. The ground of acquittal was that he had acted in self-defence. We guess that they had fought a duel. The use of " false, scandalous, reproachful, and

provocative" language was manifestly common in that squadron. It was for this offence that John " Bombo " (Benbow), master of the *Nonsuch*, was ordered to make a public apology to Captain William Booth of the *Adventure*, on the deck of the *Bristol*, in the presence of all captains and a boat's crew from each ship, and to forfeit three months' pay for the benefit of the wounded then aboard the *Adventure*. On the other hand William Jenkins, sailor of the *Adventure*, was sentenced on 8th July, 1681, to be flogged for scandalous words concerning Captain Wheeler of the *Nonsuch*. These disputes arose out of actions with Barbary pirates. The time was loud-mouthed and abusive. Charges of cowardice were thrown right and left all through the Dutch Wars. These wrangles in Herbert's squadron were only a small part of a large vulgarity and may as well rest in silence. Bad language was rife in the Straits squadron but not unchecked. Mr Thomas Rooke, lieutenant of the *Adventure*, was dismissed his ship on 10th August, 1681, for the use of blasphemous language, unlawful oaths and curses, contrary to article No. 2.

Forfeiture of pay was a favourite penalty, and that in cases where something more serious would appear to have been well deserved. In September, 1680, the gunner of Herbert's flagship, the *Bristol*, was called upon to explain how he came to blow up her gunroom. Mr Doberall (for so I read his name in the scrubby court hand of the report) had no plausible excuse to give. The court of nine captains had no choice but to condemn him for gross carelessness. Four of them voted for dismissal, which would appear to have been the very least punishment due. But five voted that

he should be fined the pay of a whole year, one half of the fine to be paid to William Slathery, mariner, who had been maimed, and the other to the families of four members of the crew who had been killed by the explosion. The sentence was probably due to pity for the maimed sailor, and the families of the slain. The five captains perhaps thought that Mr Doberall ought to pay for his breakages, and the only way of forcing him to comply was by allowing him to remain as gunner after he had blown up the gunroom, and damaged or killed five of the crew. The fact that fines were paid to the Chest at Chatham, then the only naval charity, made them popular with the Court. When John Lewis, carpenter of the *Charles Galley*, was found guilty in September, 1687, of selling a coil of the ship's rope to the Spaniards at Gibraltar, which was just embezzlement of the King's stores, he was fined ten pounds to be stopped out of his wages for the benefit of the Chest. But circumstances alter cases, and every careless gunner was not so fortunate as he of the *Bristol*. In October, 1691, when the War of the League of Augsburg was in full swing, the gunner of the *Exeter* was tried on board the *Victory* in the Medway. His offence was that he had kept gunner's stores in his cabin, and had thereby caused an explosion, and the loss of the ship. He was condemned to be hanged. The Court added a petition to the King that his body might be hanged in chains on the Marsh opposite the gunwharf as a perpetual warning to negligent gunners. The severity of the punishment was measured by the amount of the damage done.

There was, it is clear, much laxity in the Navy as it was left by James II, and taken over by the

Revolution Government. In fact what the modern Navy counts efficiency and discipline were but dimly understood. Let us for instance look at the story of the loss by fire of H.M.S. *Henry*, in 1682, in the Medway. Our principal witness is Richard Wallis, mariner, who caused the fire, and very frankly confessed his fault. He tells how he entered the *Henry* in March of that year, and at his first coming lay in a hammock on the middle deck, but finding it "uneasy to get in and out of by reason of his age" he removed to a cabin in the cockpit. Here he laid his bed on a quantity of "ocum" stored in the cabin. On the night on which the fire took place, he was turning in after prayers at about 9 p.m., and after undressing took his candle off the nail on which it was fixed. By all regulations and the custom of the sea that candle ought to have been safely housed in a lantern. It fell from the old man's fingers and fired the oakum. Poor Wallis did his best to put the flames out by beating them down with his hands, to no purpose. The flames grew, and poor old Wallis was burnt to the bone in face and hands. The escape of the smoke up the hatchway alarmed the boatswain, Mr Hawes, who tells in his deposition how he rushed down and saw the "ancient man" on his knees contending with the flames. Mr Hawes tried to make the most plausible looking case he could for himself, but it is pretty clear that he lost his head, and so did the other members of the crew. The ship was burnt. The Court Martial which sat on the *Charlot* yacht, condemned Wallis to be cashiered, to forfeit his pay to the Chest at Chatham, and to stand for half an hour on H.M. Hulk at Chatham, with a rope round his neck "reeved to the gibbet," between the hours of 11 and

12 on the 13th of the month. The boatswain was dismissed and sentenced to be imprisoned during His Majesty's pleasure. It is to be noted that the Court acquitted the purser, Mr Oliver Hardiman, on the ground that the fire did not happen in his watch. From that we may conclude that the purser in 1682 kept harbour watch.

There was also, as we can well believe, much brutality which had full freedom when discipline was lax. In 1687 and on the 6th September a Court Martial was held on the Flagship in Gibraltar Bay to try John Shaw for the murder of Allen Leads or Leeds. The President was, of course, the Commander-in-chief of the squadron in the Straits, Henry Fitzroy, Duke of Grafton, son of Charles II and Barbara Villiers—he who joined the whigs at the Revolution and fell in the attack on Cork in 1690. Ten captains formed the Court, and among them were Killigrew, Lloyd the Jacobite agent of after days, Lord Berkeley, and Berry. The case they were to decide on was of the simplest.

Shaw and Leeds, who belonged to the *Pearl*, had been drinking before the main hatchway, and after the manner of such as they, had been contending in a boozey fashion as to which of them was the best man. Shaw urged his mate to come with him before the bitts, two solid pieces of timber which stand in front of the foremast, and are used to regulate the run of the cable which is turned round them. His object was of course to decide the question in debate. Leeds was reluctant to go but in the end consented. They transferred their squabble, and their drink, to the front of the bitts. After a few minutes Leeds was heard to scream "He has stabbed me." Then Shaw came

swaggering aft with his can in one hand and a bloody knife in the other, swearing that he would "cut up" anybody who tried to stop him. Of course he was overpowered, and in due course sent to hang at the lee yardarm.

In the early months of the same year a Court Martial had been ordered by the Admiralty to be held in the *Bristol* in the Downs. She was the flagship of Sir Roger Strickland, the Roman Catholic officer to whom King James, in his ruinous infatuation, had entrusted the command of his fleet. The case was one of gross brutality in which the actors were officers of position—Sir William Jennings, who was a rear-admiral, and like Strickland a Roman Catholic, and Captain Charles Skelton. These officers and gentlemen had been watching the work of their boats near Porchester, at the head of Portsmouth harbour, some time before the Court Martial was held in February. Jennings, as the superior officer, kept an open table. When at dinner, then a mid-day meal, he made some remarks of a querulous and not well-bred kind on the cost of these hospitalities, adding that his guests were all welcome, but that Captain Skelton ought not to have brought his friend, Mr James Greenway, who was, it seems, personally disliked by the host. Skelton retorted angrily. Jennings first observed that Skelton had been kicked once before, then drew the deduction that he might be kicked again, and wound up by predicting that he would be kicked at a future date. Skelton's answer was to hit his admiral on the nose so violently as to draw blood. It ran down Jennings' white lace cravat.

There are those who still speak of the fine manners

of the ages when every gentleman wore a sword, and knew how to use it. They are also among the many who take their own hasty deductions for facts, and assume what they would find it difficult to prove. The fine clothes painted by Vandyck and Lely covered much mere blackguardism. The age of Falkland was the age of Goring and Lunsford. In an age of fine manners as well as fine clothes Jennings and Skelton would not have come to fisticuffs like a couple of tipsy bargees. If gentlemen did settle their quarrels with the romantic sword their scuffle would not have ended as it did. Skelton would not have gone off to his own ship to avoid, as he says, further disturbance. He would not have reflected that he had got himself into trouble, and under the influence of that sobering reflection would not have rushed off to Jennings' flagship to make a grovelling apology. He was said to be addicted to saving himself from the consequences of insolence by grovelling. On this occasion, after telling one of the officers of the flagship, the *Jersey*, that even if he had given the admiral a bloody nose they would not take his command from him, he cringed to Jennings. The admiral might beat him if he liked, but he would be forgiven. He would lie at Jennings' cabin door till he had his pardon. At last Jennings was wearied into making a promise to forgive him, and so got rid of him. But the scandal had been public, and Jennings did report it at head-quarters. Orders came down from Whitehall to hold a Court Martial. The Court found—and what else could it do?—that both men had been guilty of “scandalous misdemeanour derogatory to the honour and discipline of His Majesty's Service.” The sentence was not one of dismissal from that service in

disgrace, but a fine of nine months' pay, and a "severe reprehension." Jennings fled abroad at the Revolution, and is vaguely heard of as serving with the French. Skelton remained in the Navy, and is often to be found sitting on Courts Martial. What essential difference was there between such officers and gentlemen as these, and such men as Leeds and his murderer Shaw? I can see one only. The ruffian of the fore-castle was not quite such a cur as the rowdy of the quarter-deck. And the mild penalty inflicted must be held to prove that in the opinion of their brother officers they had not so disgraced themselves as to be disqualified for serving the King.

As we turn over the grimy, ill-arranged, and fragmentary papers of No. 5253 Secretary's In-Letters, we naturally look for signs of what the Navy thought of the fall of its Sovereign and patron. There are a few, and they cannot be said to show that his sailors were deeply moved by the misfortunes of the King. We probably hear the real sentiment of the Navy from the mouth of Mr Thomas Jennings, lieutenant of the *Pendennis*. He deposed as a witness before the Court Martial which, in June, 1689, tried Captain Wilford, of the *Eagle* fireship, for not revealing a proposal made to him in March by Sir William Booth. This was the same Captain Booth of the *Adventure* to whom John "Bombo" was ordered to make the *amende honorable*, on the deck of the *Bristol*. He remained loyal to King James and fled to France, after making an unsuccessful attempt to persuade Wilford to seize the *Pendennis*, and carry her over to a French port for the service of the King "over the water." The plot failed for reasons stated by Jennings. He said he was sorry for King

James, but that it was not he, the lieutenant, who had driven the King away. The blame lay on himself and his priests. Moreover the lieutenant would not join Frenchmen and Irishmen to fight against his own country. The officers tempted by Booth saw no prospect of advantage to themselves if they joined in his plot, and as for the cause of the King, it was in their eyes the cause of the foreigner. Wilford who had listened to Booth in his cups and had repented when he was sober, was perhaps unwilling to betray an old messmate. He was fined £500 for the Chest at Chatham, and sentenced to a year's imprisonment in the Marshalsea. Mr Philip Foster, who acted as Judge Advocate in the Channel between June and October, 1689, declared that Mr John Maddock, late gunner of the *Lyon*, was the only man in the fleet who offered opposition to the new government, and he only by words spoken on shore.

Another Court Martial held in December, 1689, on board the *Saphir* at Portsmouth, had to decide on the case of Richard Ravenhill of the *Bonaventure*, accused of "writing to the prejudice of H.M. Service, and for not reporting seditious speeches." He had written to the effect that two-thirds of the people of London (where he then was on leave presumably) were in favour of King James; that the sailors were all for him; that King William had money for the States of Holland, but not for the sailors; that Scotland was all up in arms, having turned out the Bishops and Ministers, and was raising stores for King James (Ravenhill's grip of the political situation was but loose) and the King would have his own again. Ravenhill was, we gather, indulging in a grumble. It cost him dear—

to wit, thirty lashes to be "smartly laid on" by the side of the *Saphir* and ten beside each other ship then in the harbour. Seven captains signed the sentence and there must have been at least that number of vessels at Portsmouth. Rare instances of Jacobite sentiments are indeed to be found. In 1697, a chaplain of the name of Samuel Middleton, late of the *Dreadnought*, was found guilty of having expressed sympathy with Sir John Friend and his fellow-conspirators. Whatever kindly feeling there may have been for King James in the Navy was overborne by hatred of his French and Irish allies.

When the Jacobites were in the field in 1745, we find faint traces not of active sympathy for them in the Navy, but of the operations of spite and perjury working by means of accusations of drinking the health of the "Pretender" or of seditious professions of admiration for him. On the 17th March, 1745, before the Highland rising but not before the futile attempt of the French to carry out an invasion on his behalf in 1744, Alexander Ferguson, a seaman of the *Sutherland*, was brought before a Court Martial on the *Argyle*, in St John's Road, Antigua, on the charge of drinking the Pretender's health. The Court came promptly to the conclusion that the accusation was frivolous and malicious. The principal witnesses, two seamen of the *Sutherland*, S. Cruise and A. Justice, not only contradicted themselves and one another, but had to confess that they were tipsy at the time when they professed to have heard the seditious outcries of Ferguson. It was, by the way, the middle watch. We become conscious of a certain monotony in the constant recurrence of testimony that of all the hours in the day's

twenty-four, those between midnight and four in the morning were chosen for drunkenness and disorder in the men-of-war of the eighteenth century. But so it was. The case was plain. Ferguson was a Scot, Cruise and Justice had a spite against him. They vamped up the accusation which they thought would sound most plausible.

The case of Lieutenant Johnstone, late of the *Launceton*, who was tried on the *Kent* at the Nore on the 9th July, 1746, is not quite so simple. On the whole I am inclined to think that Johnstone, whose name seems to indicate that he also was a Scot, had in him a vein of sentimental Jacobitism. What is quite clear is that he had a tendency, which has often been observed to be strong in men of his nationality, to argue the point. Under the influence, perhaps of latent Jacobitism, and manifestly of a belief that without argument there is no conversation, he let his tongue run injudiciously. He maintained for one thing that the warming pan story, in which certain of his mess-mates firmly believed, had at any rate never been proved to be true. He also asserted that, whatever the truth might be as to the warming pan, Prince Charles Edward was a "man of courage and conduct," else would he not have been where he then was, namely on the march to Derby. Most of us will now agree with Lieutenant Johnstone, but whether the ward-room of a man-of-war was the place, and whether the interval between Preston Pans and Culloden was the time, for his sound historical criticism and judicious estimates of character is another matter. The Court cannot possibly have believed that he was seditious. It only fined him whatever pay was due to him, and

directed that it should be given to the fund for the pensions of officers' widows. It also rebuked the witnesses for not revealing what they knew of Lieutenant Johnstone's "seditious speeches" sooner. They had said nothing about them for months. He himself in his defence maintained that the accusation was malignant, and accounted for it by saying that, as he was first lieutenant of the *Launceston*, he had incurred enmity by his vigour in enforcing discipline. There was most probably a large element of truth in his explanation, and his was far from being the only case in which a Court Martial was promoted simply as a means of "paying out" an unpopular messmate or superior.

We naturally look to minutes of Courts Martial to show how the Navy did its work of navigation. It must be confessed that about 1689 the standard was not what it came to be in later days. The ships were not, to be sure, so well rigged as they were later on. Yet when we find a summary of Courts Martial drawn up in October, 1691, from which it appears that eleven vessels in all had been lost by stranding, foundering and fire within two years, it would appear that there must have been bad management. One case, that of the stranding of the *Pendennis* on the Kentish Knock in October, 1689, has a scandalous sequel. Austin Birch, captain of the *Quaker* ketch, was sent to prison for deliberately refusing to give her any help when she was wrecked. In one case, that of the *Dreadnought*, the loss was due to the fact that she had been sent to sea in an unseaworthy state, and therefore foundered. King James and Mr Pepys had plainly not amended all the corruptions of the last years of King Charles. That

they had not is made still plainer by the story of the loss of the *St David* at Portsmouth, in November, 1689. The story is a forerunner of the loss of the *Royal George*.

The *St David* was commissioned by Captain John Graydon. When the ship was handed over to him, manned and presumably as being ready for sea, he visited her in the boat of the commissioner of the yard with Admiral Sir Richard Haddock, then in command of the naval forces at home. Graydon's purpose, though he does not expressly say so, was to call Haddock's attention to the fact that her "lower wale," *i.e.* the planking fixed along the outside timbers on her side below the gun ports, was rotten, and that she was ill-caulked at the stern. He said it was a shame to send a ship out in such a state. Sir Richard told him he might "give her a heel," *i.e.* heave her down or bend her to one side—and get a gang of dockyard hands to make good the defects. Now it was easy for Sir Richard to say that, and for Graydon, who himself was still lodging on shore, to give his first lieutenant, Mr Lumley, and his master, Mr William Parker, orders to have the ship heeled next day in readiness for the gang when it should come. But it was quite another matter to secure the gang or the proper execution of the orders. When Captain Graydon came aboard next morning his men were at work, but the dockyard hands could not be obtained till after much discussion, lubricated by the bottle of wine which never failed on these occasions. While they were being laboriously procured the master was heaving down the ship, shifting 49 tons of ballast, running the guns to one side, sending the men into the tops and yards so that their weight might help. The carpenter was not seeing to it that the lower deck ports

were closed. The water began to run in and, when he was told, he said that it could be pumped out again when the repairs were done. At last the dockyard gang made its appearance, and the captain came out to see them begin. Then he suddenly realized that the ship had a very heavy list, and became nervous. There was an outcry from below—or as he put it “alow”—and he sent the master down to see whether all was well. He also hailed the men in the tops and yards to come down to right the ship. It was too late, and the *St David* filled and sank. When Graydon found himself in the dockyard “very wet” he began to make inquiries, and discovered what he or Mr Lumley ought to have known before, that the heaving down had been recklessly done. The Court Martial exonerated him, sent Lumley to prison for six months and fined the master and carpenter for the benefit of the Chest at Chatham, the latter being dismissed the service. It was well for Captain Graydon that he was tried by a Court of brother captains. We cannot but think that this was an example of the partiality of which Rupert complained.

And how about the fighting? Well we know that the Navy of the Revolution could fight. The case of John Pike, second lieutenant of the *Swiftsure*, was assuredly an exception and a rare one. During the battle of La Hogue this officer deserted his station, and hid for two hours in the captain’s store room. He was sentenced to be taken to each flagship in the fleet between the hours of ten and twelve and his crime to be there proclaimed by the Provost Martial with beat of drum. The twenty-eight officers who composed the Court by which he was tried on board the *Britannia*

appear to have been less wrath with, than roughly contemptuous of, him, which may be taken as a sign that such conduct as his was so uncommon as not to appear serious.

Capacity to fight is the root of the matter no doubt, but it is not enough when officers put themselves into positions where they ought not to be, and where fighting cannot undo the mischief. Take the case of Captain Bounty of the *Mary Rose* (often written the *Maryros*) who was dismissed the service in 1692. This officer sailed in June of the previous year in company with the *Constant Warwick*, Captain Moody, to convoy a number of merchant ships to the West Indies*. He was the senior officer. Being his "own man" for this command he kindly took Mrs Bounty with him for a short Channel trip. When off Portsmouth he sent her ashore in the *Talbot* ketch, and went on his way down Channel, going slowly so that the *Talbot* could pick him up. Time and tide were not suitable, and the ketch had not appeared when the convoy was off Plymouth. Captain Bounty turned into the Sound and waited for her for three days. When she joined he put to sea again, and went further down Channel to Falmouth. Here he stopped again for some days to enable the *Constant Warwick* to provide herself with a surgeon. At last he went fairly on his cruise, in a leisurely way, turning to chase every sail that appeared.

* The word convoy is one of double and therefore ambiguous meaning. To sail in convoy is to sail in "consort." In the case quoted above Lieutenant Kinson of the *Constant Warwick* says that his ship left the Downs with the merchant ships and her convoy. He obviously meant that the *Mary Rose* was the convoy or consort of the *Constant Warwick*. The convoy was commonly understood to be the man-of-war which protected the merchant ships or trade. But in time the word came to be used for the whole combination of protected and protector.

He picked up several Portuguese and a big Genoese or Leghorner on their way south, and saw them safely to the Rock of Lisbon. The next thing that happened was that the look-out man at the mast-head saw a number of sail on the horizon at daybreak, and Captain Bounty must needs find out who they were. He stood towards them for this purpose, and discovered a whole French fleet. Then of course there was nothing for it but to be off. But it was too late. The merchant ships scattered and the French came helter-skelter after them. At about 2 p.m. a big Frenchman of "70 guns and upwards" overhauled the *Mary Rose*, and hammered her briskly for an hour and a half. The *Constant Warwick* kept on the weather bow of her "convoy" and tried to get off. But the big Frenchman pushed on, leaving the *Mary Rose* all tattered and torn, and fell upon the *Constant Warwick*, and of course by this time other Frenchmen were dropping in. The end was that first the *Mary Rose* and then the *Constant Warwick* surrendered. And in the opinion of the witnesses these things happened because Captain Bounty dawdled in the Channel, and wasted time in chasing everything he saw, and went further south than he had any call to go. They were also agreed that the reason why he went so far south was that the big Genoese or Leghorner gave him three score guineas to be protected by him down to the Rock of Lisbon. Captain Bounty met this final accusation with a candour which disarms criticism; "Why," said he, "it was only twenty pounds."

The Court Martial acquitted both officers of the charge of having surrendered cowardly, but dismissed Captain Bounty from the King's service, without

assigning any reason, except that he had done wrong to go so far south. A fellow feeling made all his generation on sea or land wondrous kind when three score guineas or twenty pounds had given occasion to sin.

To give convoy was a very important part of the work of the Navy, and bitter complaints were made of the way in which this was performed. The merchant skippers were often responsible for their own misfortunes. We need not hesitate to believe that the Court Martial, of which Russell was President, which acquitted Captain Wooden on the 9th August, 1691, came to a just decision. Wooden was accused of causing the loss of vessels he was convoying by negligence. But he was able to convince the Court that they had deliberately left him and had pushed ahead as they neared home. They ran right in the way of French privateers and were captured.

We can take the word of the Court Martial for it in the case of Captain Wooden the more readily, because, where there was good reason for blaming the Naval officers, Russell showed no disposition to spare them. On the 30th April, 1694, he presided over a Court Martial, held on the *Britannia* at Spithead, on Captain Wickham of the *Diamond* and Captain Parry of the fireship *Cygnets*. Their offence was that they had allowed themselves to be taken by two French privateers off Cape Clear, while they were bringing home a number of trading ships from the West Indies. Each was sentenced to pay a fine of £1000 and to ten years imprisonment. The trial is interesting for various reasons. We learn from it, among other things, that Mr Shales, purser of the *Diamond*, did duty as a lieutenant during the action, because one of the two regular

officers of that rank was "lunatick" and under restraint. Then among the depositions of the witnesses is one signed by the other lieutenant, Coleman, by Mr Shales, and fifty of the crew, of whom some but not the majority only make their mark. It is a brisk picture of a fight told as the fighting man tells of battle.

"We officers and seamen belonging to their Majesties' (*i.e.* William and Mary) ship the *Diamond* doe Testify that upon the twentieth of September about eleven in the morning we Ingaged with two French Frigotts one of forty guns and the other of thirty four—that of thirty four engaged us first to windward nigh an hour within half Musquet Shot, in which time she killed and wounded us Severall men. The other boarded us upon the lee quarter having on board him two hundred and four score men. They entered us in the Gunroom great cabbin, and quarter deck, where we fought them above half an hour, after they were entered, and cutt down our colours. Having fifty odd of our best men killed and wounded, and not above eighty men in all aboard when we began. Severall being very weak with Flux, our Company with boys and all not exceeding one hundred and forty. We were so weak at last and their number so great that one after the other as they seized [we] tooke quarter. Being almostt suffocated with their stinkpots and granados Shells which they hove in at the ports, and holes they tore with their great gunns in our quarters. We likewise Declare that our Captain to the uttmostt of his Power Did Incourage us and Defend their Majesties' ship so long as all was possible with so weake a number as remained to which we subscribe."

The statement of the deponents as to the number of the *Diamond's* crew is not of the clearest. What they probably meant was that there were only eighty men available to fight the ship after deducting the sick boys and "others." We do not learn from them that these "others" included several army officers on their way home from the West Indies. The sailormen characteristically enough lump the "lobsters" with the sick and boys. The fight had been carried on behind "the close fights," *i.e.* cubbridge heads and partitions, till the Frenchmen forced their way from the gunroom great

cabin and quarter-deck, clearing the way by throwing stinkpots* and hand grenades in front of them.

As told here the loss of the *Diamond*, a forty-eight gun ship, does not appear to have called for the severe sentence passed by the Court. But Captain Wickham was accused of having weakened his crew by "lending" men to merchant ships. A summary of his defence has been preserved. He pleaded that he had lost so many men by disease in the West Indies that he had been compelled to press great numbers of men out of the merchant ships, and that if he had not sent them back the trading vessels could not have made the voyage home. There was probably an element of truth in this plea. The loss of life was always great in the tropics, and it was no uncommon thing for a vessel which was lying for weeks while her cargo was being slowly collected to be almost unmanned. And sailors were tempted to desert by home-going ships which were short handed. But Wickham had to confess that eight of his proper crew had been lent. He tried to throw the blame on his lieutenant, Coleman, who, he said, had been bribed, and whom he had rebuked without however recalling the men. The testimony of the witnesses who made individual depositions was not on the whole favourable to Wickham. Captain Parry's offence was that he had not come to the help of his consort. The Court had all the persons and facts before it and was probably not essentially unjust †.

* "Stinkballs. A pyrotechnical preparation of pitch, rosin, nitre, gunpowder, colophony, assafoetida, and other offensive and suffocating ingredients, formerly used for throwing on to an enemy's deck at close quarters, and still in use with Eastern pirates, in earthen jars or stinkpots." Ad. Smyth, *The Sailors' Word Book*.

† The account of the loss of the *Mary Rose* and *Constant Warwick*, the *Diamond* and the *Cygnets*, given here differ from what the reader will

I have dwelt on the years about 1688 somewhat fully because they form our starting place. The internal history of the Navy is the history of the gradual formation of the code of manners, discipline and honour which constitute "the service." At the Revolution the Navy, though in one way old, was still in its infancy as a permanent organized force. No human institution ever came into existence full grown and fully armed. It is always the result of the work of generations and of many men. The cases quoted above are enough to show how much there was to do before the Navy of 1688 could become the Navy of to-day. Others might easily be given. We hear of Mr Marmaduke Dorrington, surgeon, who assaulted his captain on the quarterdeck; of the first lieutenant of the *Kingfisher*, who, in defiance of repeated orders, caused a boat to be manned and was for going ashore, and who obeyed only when his captain threatened to open fire and sink him; of Mr Mocker, master of the hired ketch *Anne*, who, when ordered to send twelve men to H.M.S. *Hampton Court*, weighed anchor and sailed away. He pleaded ignorance and was fined four months' pay. Even points of etiquette were not settled. We hear of a Captain Radford of the *Princess Anne*, a merchant skipper taken into service after the Revolution, who was tried for hoisting the union flag at the fore. He had done it at the request of Meinert Schomberg whom he was taking over to join his father at Carrickfergus, and for the purpose of encouraging the soldiers by leading

find in easily accessible printed sources. I make this remark for a particular purpose. It is not my intention to devote any space to making corrections of what are, or seem to me to be, errors in the work of other writers. I only ask the reader to believe that what he finds here has been taken directly from the official records.

them to believe that a force commanded by a vice-admiral was coming to their relief. The Court, of which Killigrew was president, decided that Captain Radford meant no harm, but that even if he did they could not say which of the articles of war he had broken. They referred the case to my Lords of the Admiralty.

When on one occasion the crew of H.M.S. *Oxford* were mustered, only sixty appeared on deck out of a complement of three hundred. When the boatswain was ordered by Mr Archibald Hamilton, the lieutenant of the watch, to see why the others had not appeared, he told the officer to go and find out for himself. "It is," said the boatswain, "as much your business as mine." When the officer rushed at him and struck him, he said "I will burst your commission." My Lords of the Admiralty had their share of bad language. In 1697 a third mate was sentenced to be tied to the gears and receive twenty "drubs" for having asserted on the quarter-deck that they were "all rogues." Lieutenant Oats of the *Crown*, being as it seems in liquor, told his captain that if he were to be employed on press duty he would certainly not take bribes, but that he would pocket all the "presents" offered him. When he was sober, and was asked by his captain if he were not ashamed for having spoken so grossly, he proved contumacious, and even went so far as to assert that he had said the same thing to the Lords of the Admiralty already, and had added—that this was precisely what they themselves did. There was an element of truth in the lieutenant's blustering romance. It was the age of "complements" as Mr Pepys preferred to call them, and the Court Martial did not necessarily dissent from Mr Oats's estimate of official morality because

they dismissed him from his ship. When there was so much undiscipline in mere loose language and disobedience to orders, it is but natural that we should meet examples of murderous violence. On the 16th May, 1694, a Court Martial presided over by Shovell sat on the *Neptune* at Spithead to try Captain Gurney of the *Bristol* for the murder of Lieutenant Lucas. The captain was acquitted and not unreasonably. Lucas, it was shown, lived in a state of perpetual quarrel with everybody in the ship. He had capped a long series of violences by rushing sword in hand at his captain and "pushing" at him furiously with that weapon. The depositions have not survived and the sentence does not state how Mr Lucas met his death, but the Court Martial was convinced that, by "whatever accident" he died, the captain had acted in self-defence*.

A less serious, but no doubt more common instance of the rowdyism of the age is to be seen in the story of the chaplain and the carpenter of the *Assistance*. The chaplain was a Scot whose name appears as Tuar (? Dewar), who we may presume was one of the Episcopalian clergy "rabbed" by the triumphant Presbyterians in 1688. Some friend had provided for him by securing him the very modest position of chaplain to a man-of-war. The carpenter, Mr Wilmott, a man of drunken habits, had a visible prejudice against Scots, and showed it by the use of much abusive language.

* It is not unusual for long after 1694 to find the papers relating to a Court Martial in a fragmentary state. From notes scribbled on the backs of documents which do survive, we learn that the minutes of the evidence were sometimes claimed by the Secretary of the Admiralty, to be laid before the Board, or the Judges, and were never returned.



Richard Parker

At last there came a day when the "padre" was reading in his hammock, and the carpenter walked round him saying in an offensive manner "Sawney, Sawney." National prejudice was sharpened on this occasion by some dispute concerning a barrel of wine. At last the carpenter became so intolerable that the chaplain forgot his cloth and trounced his tormentor. They both appeared before a Court Martial on the *Swiftsure* which fined the cleric a month's pay for the assault and dismissed the carpenter, not only for this particular offence, but for his general "sottishness."

The briefest account of the old Navy which took no notice of "mutiny and desertion" would be very incomplete. Mutiny was an elastic word, covering disorders which ranged from mere threats to beat the boatswain, to attempts to seize the ship. Desertion was common in an age when men were driven to serve, were paid only at the end of a commission, and were then forced to recover their wages by tiresome waiting at a central office. The two were often combined, for the deserters might seize, or try to seize, a boat and run away with it, or might knock down any one who tried to detain them, and such actions as these were "mutiny." An extreme example of a very common case is supplied by a Court Martial held on the *Hampton Court* at Spithead, on the 30th October, 1694.

The prisoners were Robert Brooks, John Steele, Henry Webbe, Robert Crispe, and Richard Simpson of the *Woolwich*. Many others "against whom there was no positive evidence" were concerned. The *Woolwich* was going into dock at Portsmouth for repairs. Thirty of her men were transferred, under charge of a

midshipman*, Robert Thompson, to the hospital ship *London Merchant*.

The men were transferred to the *London Merchant* on Friday the 21st October, and the mutiny took place at 10 p.m. on Sunday. At that hour the midshipman Thompson was on the quarter-deck, and he saw first Simpson, and then Brooks, who appears as the ring-leader of the whole affair, and was called captain by the rest, come up from below, and go to the fore-castle.

* Midshipman, it should be remembered, was a petty officer's rating, which might or might not be held by a lad who was appointed "to walk the quarter-deck" and "treated on the footing of a gentleman." A midshipman's rating was allowed for a young gentleman who was sent with a "King's Letter of Service" to a ship with instructions that he was to be treated as a gentleman, and to be bred an officer. In time "Midshipmen" came by use and went to be the title of the "young gentlemen." But the process was a gradual one, and for long after the first appearance of "The King's Letter Boy" who came as a gentleman with a "King's Letter of Service," and for whom an additional midshipman's rating was allowed, there were other midshipmen who were petty officers chosen from among the crew, and who were stationed forward. The "Letter of Service" brought by "The King's Letter Boy" appears at the beginning of the reign of Charles II, when the first of them, Mr Darcy, was sent to Stayner's flagship. This was the beginning of the formation of a corps of officers. It may be pointed out that "rating," *i.e.* rank and official title, had no necessary connection with social position or professional prospects. A "King's Letter Boy" might be one for whom a midshipman's rating was allowed. Then he was a "midshipman extra"—a title which was not much used, and which disappeared early. But there might be more "King's Letter Boys" than there were extra midshipman's ratings allowed to the ship. The Captain would station any one he pleased on the quarter-deck, treat him on the footing of a gentleman, and rate him Captain's Servant or Able Seaman. The son of a peer might be rated Captain's Servant. Nelson was rated Able Seaman in his youth. A midshipman in earlier days might be one of the crew who had no prospect of ever being an officer. One of the deponents in the case of *Bounty's* convoy who made his mark was a midshipman. He was just a sailor who held the petty officer's rating. Promotion to a Lieutenant's commission could be given to any man who had served in any capacity fore or aft, if he could do, or could obtain a certificate that he could do, the work of an Able Seaman and knew some navigation.

Thompson had clearly a shrewd suspicion of what was going on. He rushed to the steerage and seized a musket with which he intended "to speak to them." Meanwhile others of the *Woolwich* men had come on deck after Simpson and Brooks. John Harvey, one of the *London Merchant's* crew, gave the alarm by shouting "Turn out all hands." The trampling and outcry on deck roused the officers and men of the ship who were below. They turned out. The mutineers had taken the precaution to fasten the doors of the carpenter's and the gunner's cabins outside—the gunner's because he alone could supply ammunition to the crew of the *London Merchant*, and the carpenter's because he and his tools would be needed to undo the fastenings. They hoped to cause delay enough to give them time to clear away a boat, and be off. It was a good plot, but it failed. The carpenter's mate, Robert Hubbard, kicked the cabin door open from inside, and rushed out. He was attacked by the mutineer Crispe, "a short thick-set man," with the cook's axe. Hubbard grappled him, and the boatswain's boy came to his assistance by hitting Crispe on the head with a nipper, *i.e.* the armourer's pincers. The carpenter released the gunner who served out arms to the loyal men. In the meantime the mutineers had gained possession of the waist and forecastle of the ship, after a sharp scuffle in which men were "hove down" on the deck and "stanchions" were freely used to break heads. They tried to lower away a boat, but found it made fast by a chain which they could not loosen. A pitched battle ensued between the crew of the *London Merchant*, headed by their master Garret-Burn and the midshipman who had been driven aft, and the mutineers who pelted them

with shot. At last the officers of the *London Merchant* were able to load and fire a musket and a great gun to alarm the ships lying near them. Armed boats were soon alongside, and the mutineers surrendered.

The Court Martial followed on the 30th. Brooks, Steele, Webbe, and Crispe were sentenced to be hanged on the *London Merchant* on the 9th November. They had only pleaded that they were in liquor, which does not appear to have been the case. The mutiny had obviously been prepared, and it was mainly an accident that no life had been lost. Simpson was acquitted on the ground of lack of evidence, and nothing was done to the other mutineers. The sentence was not more severe than was inevitable in the circumstances, and the Court showed a disposition not to go further in inflicting punishment than it could help. Brooks had been the ringleader, and the others who were condemned were proved by the testimony of the loyal men to have struck blows.

And here I think it well to make a general observation on the sentences passed by Naval Courts Martial at this period. It is that they were not as a rule ferocious. The floggings were not so extreme as they were apt to be at a later period. Sentences of death were no doubt common, when the articles of war left the Court no discretion, but the terms of the sentences show that in many cases the Court did not intend that the condemned men should be "left for execution." When, as in the case of Brooks and the others, the offence was very gross, the time and place of execution were fixed by the Court. When that was done we may presume that the Court intended that the sentence should be carried out. But the choice of time and place was sometimes left

to the Admiralty, and then we may presume that the Court did not recommend the application of the penalty. In many cases the sentence was recorded not only without specification of time and place, but even without reference to the Admiralty, and then it appears to amount to little more than a warning or threat.

The Court was, as we might expect, inclined to be tolerant of mere grossness. In May, 1695, a Court, presided over by Sir Stafford Fairborne, had before it a case of blows and strong language in which the parties were the captain and officers of the *Assistance*. It gave its judgment on the whole case in these terms :

“ It is the opinion of this Court that the same [i.e. the quarrel] has proceeded from a jealousy about prizes, and that both persons are in error.

This Court doth order that Captain Robinson shall ask Mr Barr his said Lieutenant pardon for striking him, and also doth reprimand the said Lieutenant for giving his Captain any provocation, and to be more observant in his duty for the future, and that it is further the opinion of this Court that it would be much for his Mag^{ty} Service if the officers in general on board the said ship were separated.”

The recommendation was no doubt a sensible one. But it is plain that the Court saw nothing very serious in the disrespect of the lieutenant, and the vulgar violence of the captain.

And here a question suggests itself. It is one which is to be faced and answered, for it affects the character of this book. What is the real value of the matter here extracted and collected, considered as evidence for the condition and the morality of the old Navy ?

Now no doubt the frequency of certain forms of disorder does tell us something as to the level of conduct in the Navy, but it would be most uncritical to present what is here told as representing the whole of the

service. It would be equally uncritical to say no more, to quote examples of naval rudeness, indiscipline and brutality, as if they formed an exception to the manners of the age. They most assuredly did not, and we can easily convince ourselves that they did not stand alone by referring to the State Trials for instances of what was done ashore at the same time.

Clarendon noted the corruption of manners and morals which was caused by the disruption of family life and the relaxation of all moral discipline in the Civil War. And the Restoration brought no improvement. The officers and men of the Navy could not but be Englishmen of their generation. They led a harder life than most, and were somewhat, but not much, ruder than others. Nor must the physical condition of their life be forgotten. They were crowded into small vessels, fed on salt meat, condemned to breathe foul air in ill ventilated ships. They were allowed to drink excessive quantities of crude wines and other liquors. It is impossible to read the records of the life of the time without coming to the conclusion that it was counted a proof of manliness to drink freely. The "bottle of wine" was the inevitable lubricant of all business. The officers drank abominable concoctions of alcoholic Spanish and Portuguese wines, mixed with brandy, sugar and spices. They called it "hipsy," by abbreviation from hippocrass. The men followed their example—and both fell in with the manners of their kin on shore.

Nor is it quite accurate to say that the records of Courts Martial show only the evil. They show, to begin with, the condemnation of the offender by an authority which was working for the formation of a good standard

of conduct. Then by the side of those who fail we see those who did their duty. If the captain of the *Diamond* was probably corrupt, and certainly weak, we see beside him his crew who are perfectly ready to fight, and the purser, Mr Shale, who volunteered to do a lieutenant's duty, and did it manfully, on the upper deck and in the post of danger. All trial by Court Martial was not with condemnation, nor was all loss of a ship dishonourable. Beside poor uxorious, and it is to be feared bribed, Captain Bounty, we have the very different figures of Captain Roger Vaughan of T.M. Ship *Milford* and Captain John Oakes of the hired ship *Warrington*.

On the 24th February, 1694, these two gentlemen appeared before a Court Martial held on board the *Royal Sovereign* in the Medway, and presided over by Lord Aylmer. They had been employed on convoy duty to protect a flock of trading vessels which were bringing naval stores from the Baltic. When near Yarmouth, homeward bound in thick weather, a large vessel loomed out of the mist to seaward and to windward of them; Captain Vaughan, the senior officer, immediately took station with the *Warrington* between his charge and the stranger. Four other vessels joined the newcomer, and the bearing of the five showed that they were enemies. They formed in fact the squadron of M. de St Claire, who was out on commerce destroying duty. So soon as he was sure he had an enemy to windward Captain Vaughan ordered the "trade" to make off to the south before the wind, which was north-easterly, and stood to the north-west on the starboard tack. His purpose was to divide the enemy, and also to put himself in a position to gain the weather gage

and fall on the French if they should follow the trade. St Claire judged that he must dispose of the convoy before he could capture the merchant ships. He followed the *Milford* and *Warrington*, overhauled and took them, but not till they had made a most resolute fight, were cut to pieces, and had put their mark on their enemy. The merchant ships and their valuable cargoes of naval stores escaped, with the exception of one fly boat which did not obey Vaughan's orders. The captains, who had done their duty in an officer-like manner, were honourably acquitted.

The elements of good and bad are more mingled in the story of the loss of the *Hope*, and for that reason it can all the better stand for an example of the whole.

In April, 1695, the *Hope* left the Downs in company with the *Captain*, *Montague*, *Anglesea* and a fireship, to convoy the Mediterranean trade. She was the ship of the senior officer, Captain Robinson. The age had not even begun to catch sight of the modern standard of efficiency. Captain Robinson suffered cruelly from the prevailing diseases of his time and profession, gout and gravel. He was commonly confined to his cabin. Yet he had need of the full command of his body and mind, for he sailed with only one lieutenant of the three belonging to the *Hope*, and very ill manned. Two of his lieutenants were ashore with their gangs engaged in impressing men, and they were left behind. The press was a two-edged weapon, and hurt the Navy at times nearly as much as it helped. The general condition of the ship is set forth in one of two depositions made by the remaining lieutenant, Mr Richard Falle.

“ As we were going out of the Channel [Mr Falle must have meant the Straits of Dover] to convoy the Straits fleet [*i.e.* the Mediterranean trade called “ fleet ” perhaps in imitation of the Spanish *flota*] and being at dinner with the Captain I asked him how he would have me to watch. He told me being that I was alone lieutenant in the ship, and having so many raw men that never was at sea, he would have me to exercise the said men every day watch to the great guns and small shot, and that he would have me to go to bed late and rise early in the morning, and to give the Captain an account of what happened in the day time, and that the Master and his Mates should do the same in the night.”

The lieutenant was writing for the information of a court of officers who did not need to have everything explained to them. If he had known he was writing for us he might have said that the master and his mates were to keep watch and watch all round the clock—the master and third mate, alternating with the first and second mate, while he, the lieutenant, going to bed late and rising early, was to be executive officer by day, and to see to the training of the raw men as his particular task.

He had but little time in which to train, for the convoy was scattered in the middle watch of the night soon after it passed the Lizard. The weather was changeable with erratic breezes blowing “ all round the compass ” and intervals of calm. The sea fog was thick. At midnight on the 12th April, the master, who had kept the first watch, was relieved by his mate, Mr Thompson. Now Mr Thompson was an old man. Age was no disqualification when men were so hard to come by. And he was not only old, but apparently a little failed, and his obstinacy was senile. The master told him that the ship had just been tacked to the west, and that if he found it necessary to tack again he must fire a gun to let the other ships know that the *Hope* was “ going about.” To this Thompson answered testily that he

knew all about the signal, or that he knew his business. The witnesses differ. We gather that Mr Thompson was not only in a "middle watch" mood, but was resentful of the fate which condemned one of his age and experience to take orders from his juniors. Respect for superiors in rank was not then fully developed. The master, glad enough no doubt to turn in, left the "ancient man" to grumble through the middle watch.

Half an hour later a sudden change in the wind headed the *Hope*, and she was "heaved round," as the witnesses put it, to the eastward. Thompson let her run, and then from a conflict of testimony one makes out that he prepared to tack. Some of the watch, not wishing, we presume, to do more work than they could help, pointed out that this was useless as the other ships were following them. Now this was true of the *Anglesea* and the fireship, which could see the *Hope*. The *Captain* and *Montague*, from whom she was hidden by the fog, hearing no signal, went on and at daylight found themselves alone. Thompson fired no signal, and when some one pointed out that he ought to do so, answered in his peppery way that he knew his business. He made no report to the captain, even when Robinson, hearing more noise than usual on the quarter-deck, rang his bell and asked what was happening. When the captain came on deck he found that he was alone with the *Anglesea* and the fireship. His anger was vehement but not uncontrolled. He said to Thompson, "If you were not so old a man I would kick you off the quarter-deck." And then he uttered the pious wish that the mate's folly and obstinacy might not bring misfortune on them all.

Captain Robinson's wish was not to be fulfilled.

Next morning at sunrise, the three English fell in with five French vessels under the command of M. de Nesmond, a very active French naval officer, and a "commerce destroyer" of the stamp of Duguay Trouin, and Forbin-Jonson with whom he often acted. When the Frenchmen were seen, Captain Robinson laid his topsail to the mast and waited for the *Anglesea* and the fireship, which were astern, to come up. They joined him, answering cheerfully to his hail as they passed, promising to stand by him, and then ranged ahead. It was pointed out to the captain that they were carrying much sail and showed a disposition to go off. He answered that whatever they did he would fight his ship till she sank.

It would appear that the next step would have been to beat to quarters. But when 150 of the *Hope's* were "raw men that never was at sea" this would, in any case, have been of little use. Moreover the practice of assigning men to a particular station was not established in the Navy. While the French were still some distance off, Captain Robinson ordered the lieutenant and the master to go below and see that all was clear. The gunner was busy filling cartridges, for few were ready. When Lieutenant Falle reported that all was clear, the men were sent to their quarters, and then, he says in his second deposition, the captain "took me by the hand and told me if anything happened to him [I had] but well to behave myself bravely and not to surrender the ship like a coward, and I promised him to stand by him as long as I lived."

Nesmond came down from windward on the quarter of the *Hope*, fired into her, and then ranged ahead to engage the *Anglesea*. The other French vessels followed

and fell upon the *Hope*. Their gunnery cannot have been of the best, even allowing for the erratic course of shot at a time when an enormous windage was allowed. The English ship held out, making a running fight of it, for eight hours. Captain Robinson was wounded on the neck and went below to have his wound dressed, but he returned to the deck and sent Lieutenant Falle, who had come up to take his place, back to his station on the main gun-deck. There was much talk of fighting till the ship sank, and an excellent example was set. The "raw men that never was at sea" responded heartily. If they could not know they at least tried, and British valour was vindicated. Perhaps all concerned had a pardonable human desire to put their conduct in the best light. But it was clearly proved that the *Hope* was defended till she was dismasted and rolling so freely that her great guns could not be used. The *Anglesea*, after engaging Nesmond till he fell astern, probably because his rigging was damaged, "sprung her luff," hauled to the wind and made off. The fireship had gone already. Allowing for what must be allowed for, the action was gallant, and the Court was right in acquitting Captain Robinson, and probably not wrong in holding that the Captain of the *Anglesea* did all he could. As for poor, erring old Mr Thompson, he was sentenced to be taken round the fleet with a halter round his neck, and to have his crime read aloud beside each ship; then to be taken to Dublin, presumably his native place, and to be landed with a halter round his neck, and his crime to be again read aloud, and to be consigned to prison. The story carries its meaning on the face of it. There was no proper preparation for battle, there was a good deal of

melodramatic attitude ; but the failure to prepare was not the fault of officers or men, and it is clear that they felt the heroics they talked. A certain pity may be allowed to Thompson. If the Navy could not do without very old men, still it was not their fault if they were weakened by age. None the less he was manifestly a stupid and self-willed old fellow.

And now with one example more, and that of the very worst, this account of the Navy as the Revolution of 1688 found it can end.

On the 30th October, 1696, Admiral Shovell presided over a Court Martial held on board the *Queen* at Spithead, to hear and judge "the disorders" aboard the *Trident*. The story begins with a conversation in the purser's cabin. The purser, the master, the boatswain, and the wife of one of the boatswain's mates were discussing the inevitable and ever recurrent bottles of wine. Other officers joined the company, and the conversation rapidly warmed to boiling point. After a furious wrangle, Lieutenant Huggins of the *Trident* first locked the master, Mr Bryan, in his cabin, and then reported him to the captain—Griffiths. The deposition of the captain takes up the tale as follows :

"That on the 21st of June when the ship lay off South Yarmouth [in the Isle of Wight] about 10 at night Lieutenant Huggins [spelt Hoggons in the deposition] came and informed me that he had confined the Master to his cabin for abusing him. I thinking the Master was in drink, forbore examining the matter till next morning, and then being informed that he was also [still] drunk, I let him alone confined till the 3rd of July. As for his second confinement it was for contradicting my command in bringing the ship from Spithead to Cowes between which places having asked him if there were such a shoal called the Middle [observe that the Captain did not hesitate to confess his own ignorance of the navigation of the Solent, which he would hardly have done if it had been counted shameful], he replied there was no such place. But perceiving he was in drink, as he often is, I hove the lead, being

unwilling to trust him, and found we were in four fathoms water, upon which I tacked the ship and stood from the shoal, and took charge of the ship myself from that place to Torbay. But he, not content herewith, contradicted me in several things, saying there was nobody on board capable of taking the ship through the Needles except himself, and upon his going off the quarter-deck, I was informed by my Lieutenant, he bid me kiss his breech, but being unwilling to ruin him, and not very forward in giving their Lordships an account thereof, and at my coming to Torbay released him from his confinement upon promise of his amendment."

The Court found that the master was an "idle drunken fellow" unfit for his place, fined Lieutenant Huggins twelve months' pay, and reprimanded the captain for not keeping better order.

Captain Griffiths may appear in the light of a weak soft-hearted man. But his story does not end there. The *Trident* gave rise to two Courts Martial in January 1697-8. These Courts, or rather this Court, which heard two cases on one day, sat on the *Humber* at Portsmouth on the 20th January. In the interval between this date and the previous Court Martial of October, 1696, the *Trident* had been to the West Indies and back. The first case was that of Lieutenant John Paul [can he have been an ancestor of that other John Paul who became Paul Jones?] who was accused by Captain Griffiths of using "provocative language." Him the Court swiftly acquitted. Then it got to the consideration of "the whole case against Captain Griffiths, including having cursed the King's service."

Captain Haughton, the President, and the score of captains who sat with him, had to come to the conclusion that Griffiths did not keep due discipline during the cruise, that he did beat his officers, did run up and down the quarter-deck with a case knife in his hand, did burn the King's Barrel Stands [a bathos indeed] and did rob

his men of plunder taken at Petit Guave. They ordered him to restore the plunder to men who could prove a right to it, and to be suspended from his command during the pleasure of my lords of the Admiralty. The charge of cursing the King's service was dismissed as being founded on the testimony of a person whose memory was shown to be untrustworthy. The Court did the least it could, for the evidence against Griffiths was overwhelming, and was not seriously disputed by himself. His lieutenant, Paul, accused him of having sunk a prize after transferring the "silver plate" (which does not mean wrought plate, but bullion—the Spanish "plata") and tortoise-shell he found in her to the *Trident*. His carpenter, Beverley Latham, told how, when the *Trident* was coming through the Florida Straits, he and the boatswain were hauling in the fore tack alone, for the ship's company was very sickly, and asked the captain's servant, who was warming himself by the fire, to lend a hand. The man refused saying, with the addition of abuse, that he had not come to be a sailor, and the carpenter struck him. For that he was savagely beaten by the captain, and then again when he asked leave to go on board "the flag"—to make a complaint of course. The captain did not like "informing dogs," as he called them, and had excellent reason for his dislike. When the *Trident* was on the coast of Virginia sixty men were landed sick. Griffiths would not allow any stores to be supplied them, saying that if "other commanders were fools he would not be such," and adding "God damme, I don't come to the West Indies for honour but to get money." And in that spirit he acted. At Petit Guave he mustered his crew on deck, and then he and his son went down and

rified the chests of the men of the "plunder" to which they were entitled. He and his son smuggled "plate" and tortoise-shell ashore for their own profit, after he took and scuttled the French prize *La Jolie*. It is but fair to add that he did say she was leaking so freely as to be unseaworthy. He beat his purser with a bed post! The man was a violent blackguard and a thief. Yet he was employed in the reign of Queen Anne and got into trouble again. But it is unnecessary to pursue his history any further. If the satirists of that and following generations, from Ward to Smollett and the author of *The Adventures of a Guinea*, did say that some naval captains were unscrupulous ruffians and bullies, if Colonel Lillingstone, who sailed with Wilmot, asserted that naval officers could be brutes, they had chapter and verse to quote for their beliefs. Such men of course were to be seen at their worst in the distant waters and buccaneer atmosphere of the West Indies. Wilmot, who said that he did not go to the West Indies "to learn the language," was the contemporary of Griffiths, who said he did not go there for honour. They calculated that news travelled slowly, and they relied on the tenderness of their brother captains if it did come to a Court Martial. All that was worst in the English character, the tendency to drink, the love of bullying, the greed, and the arrogance, had free play. When we remember that we can understand the story of Benbow's captains*.

* I have not thought it necessary to retell the often told tale of Kirby, Wade, and the others. It is very familiar. My purpose is to show what were the conditions which allowed of such a piece of scoundrelism as theirs.

CHAPTER II

DISCIPLINE

Lord Charles Beresford has somewhere said that the old Navy had flogging, and no discipline, but that the modern Navy has discipline without flogging. This epigrammatic way of putting things is dangerous for those who trust in it blindly. Brevity is no doubt the soul of wit, but it is not always, nor even often, adequate to accurate description or definition. There was discipline in the old Navy, and some flogging survives in the new. Yet Lord Charles's terse summary of a long history is at least very much nearer the truth than the supposition that our Navy has at all periods been disciplined to the degree, and with the completeness which we now consider so necessary that less appears to us to be fatal to the very existence of an effective force. If by discipline we mean only the readiness of officers and men to fight and work the ship—then the old Navy had discipline. But if the word is understood to include the steady enforcement of its own law on all ranks, the working of an institution above and independent of the characters of particular men, and the maintenance of a standard of conduct in daily life, then it must be confessed that the discipline of the old Navy was often to seek.

In judging the old Navy we must never allow ourselves to forget that it was not the stable service we now know. Until well into the 19th century, it was a fluid body, subject to sudden great expansions in war, followed by violent and extreme contractions when peace was signed. It has been already stated that nobody really belonged to the Navy, except the small corps of commissioned officers, and a few warrant officers. All others belonged only to their ship, and had no connection whatever with the Navy when they were paid off. The first consequence of a peace for them was that they were turned off wholesale. When the establishment was cut down from a hundred thousand or more, to ten thousand or less, the vast majority of officers and men alike drifted away back to the merchant service, or to work on shore. When war began again in ten or fifteen years, many officers were dead or had found connections which they were unwilling to leave. It was necessary to promote men from before the mast who had no other qualification than practical seamanship—which to be sure was then the most important of all. Amid so much instability, such sweeping changes, and so much diversity of origin and training, there must needs have been a lack of consistent tradition or formed habits of conduct and discipline.

Even among naval officers who came to high distinction were some whose beginnings were very humble. But the conditions of life and the careers of the forgotten body of those who won no great fame and who yet, after all, carried out the bulk of the work of the Navy, can be best shown by the fortunes of one of themselves. When in 1698 Dampier was appointed to command the *Roebuck* on a voyage of exploration, one George Fisher

was named to sail with him as Lieutenant. The old explorer and buccaneer fell out with his subordinate, and at Bahia, in Brazil, asked the Portuguese Governor to lodge him in prison. He then sailed leaving Fisher behind him. The Portuguese Governor, who appears to have been by no means edified by Dampier's actions and behaviour, released his prisoner when the *Roebuck* sailed, and allowed him to leave for Lisbon. When at last he reached home Fisher presented a petition to the Earl of Pembroke, who was for a short time Lord High Admiral at the close of the reign of William III. In this he states his grievance against Dampier, and gives an account of his own career.

From his statement which cannot but have been in the main correct, for it would have been too dangerous to try to deceive the Admiralty, it appears that, being desirous to serve the public in 1688 he enlisted in the "artillery train" of the force then engaged under Kirke in trying to raise, or pretending to try to raise, the siege of Londonderry. When at last the troops of King James had been forced to retire (with very little aid from Kirke) Fisher was taken, on the recommendation of that officer, as gunner of the *Gryphon*, Captain Chamberlain. He served in that capacity at the battle of Beachy Head in 1690, and in the following year he was, this time at the recommendation of his captain, Chamberlain, granted a lieutenant's commission, and appointed to the *Royal Oak*. He served in this ship under a succession of captains, the elder Byng, Graydon, Elwes and Rooke. He passed from the *Royal Oak* to the *St Michael*, then commanded by Munden, and followed him to the *Albemarle*. When Munden left the *Albemarle* Fisher continued in her under Fairborne. He

had served with the approval of all these officers, of whom, at least, Byng, Rooke, Munden and Fairborne were distinguished.

In 1697 the Peace of Ryswick was followed by a reduction of armaments, and Fisher found himself not only without employment, but, as things then stood, without half pay. He thought of taking service with the merchants, but accepted the post of lieutenant to Dampier when it was offered him. When he returned to England from Lisbon, he found a place as captain of a merchant ship, and was absent when Dampier and his ship-wrecked crew were brought home from Ascension in 1702*.

No essential change was made throughout the whole period of the great wars, nor for some time after the Second Peace of Paris in 1815. The long duration of the struggle against Revolutionary France and Napoleon—twenty-two years of a constant state of war—and then the necessity of maintaining a large naval force in peace to protect a world-wide commerce, and equally extensive political interests, prepared the way for the formation of a permanent body of seamen of the Navy. But this was a work of the middle 19th century. When the Crimean war came it was necessary

* Though Dampier sailed with a Royal Commission, his unfortunate cruise in the *Roebuck* cannot be said to form part of the history of the Navy. On the complaint of Fisher, or rather of Mrs Fisher who presented a complaint against him in the absence of her husband, he was brought to a Court Martial held on the *Royal Sovereign* at Spithead, and presided over by Shovell, on the 8th June, 1702. The Court found that he was an unfit person to command one of H.M. ships, and sentenced him "to be fined all his pay, for the benefit of the Chest at Chatham exclusive of £50 stopped in the Treasurer of the Navy's hands, for indemnifying the Queen as to a Bill drawn on the Navy Board by Lieut. Fisher from Lisbon." See Ad. Sec. In-Letters 5262.

to recruit men of all classes to serve as seamen in the fleet. By an oddity which it would perhaps be impossible to account for, London cabmen volunteered in numbers to man the ships which went to the Baltic with Sir Charles Napier. In the Revolutionary war, Pellew had completed the crew of his frigate, the *Indefatigable*, by recruiting Cornish miners. I have never been able to discover that there was any change in the general character of the Navy other than changes in degree, and in the "separable accidents." The men of the Navy were affected by the influences which were working on the whole people. The great religious movements of the 18th century, Methodism, and the rise of the Evangelical party in the Church of England, touched the naval world as well as others. The "blue lights," as they were called at sea, were known types in the fleets which fought the great battles and maintained the Brest blockade. When Captain Pakenham of the *Invincible* hailed his brother captain Gambier, whose ship, the *Defence*, had been roughly handled on the 1st of June, and shouted to him through a speaking trumpet, "Whom the Lord loveth he chasteneth, Billy," the jest lay in this, that Gambier was "a blue light." It is recorded that some artful members of Saumarez' ship's company found they could get on the weak side of their captain by an affectation of piety. The general softening of manners, and the growth of the sense of decency, which came as the 18th century went on, had their influence on the Navy. No two officers of the age of Nelson and the Nile would have behaved as did Jennings and Skelton—or, if they had, they would have been dismissed for conduct unbecoming officers and gentlemen. But changes in manners did not alter

the organization or the essential character of the service. When Napoleon had gone to St Helena, the Navy was put on a peace footing, the whole body of officers was subjected to a process of sifting, popularly known as "passing for a gentleman." Large numbers were put aside because they could not stand the test.

The word "discipline" is as easy to write as any other, but its true meaning is not so easily defined. When Mr Peter Simple was a prisoner of war he had occasion to observe that the French soldiers "did not appear to have the same discipline, or the same respect for an officer, as the soldiers have in our service, or they would not have been so free in their language; yet, at the same time, they obeyed all his orders on service very implicitly." Mr Peter Simple united two elements which go to make up complete discipline—obedience to the command of all who are authorized to give orders on service, and the respect which is paid by those who are under command to the knowledge, breeding and social superiority of those above them. Obedience to orders on service can be enforced by penalties. But the respect which is given to an acknowledged superiority of a social character cannot be produced by mere military codes and articles of war. When the respect of class for class is lacking, the obedience is liable to be unstable. Nor can there be quite trustworthy discipline where the right to command and the obligation to obey are not precisely defined. It was not in a day that the subordination of the inferior in rank in the Navy was thoroughly combined with the respect for the "gentleman"; nor was it from the first certain how far the authority of one rank over another reached.

We may find it said that the officers of the old Navy

were not gentlemen. If this means that they were not in the main, and as a rule, of the same origin as the officers of to-day, an examination of the Navy Lists will show that it is an unfounded opinion. It is true enough if it only means that some of them were not, and that some of those who were could display extreme grossness of language and conduct. When Mme. D'Arbly found cause to complain of the breeding of certain officers she met at Bath, it is to be noted that the one of them who pleased her least was Constantine Phipps, Lord Mulgrave, who was as much a gentleman by birth as any man could be. It was his personal misfortune that, though he no doubt had the mechanical parts of the manners of a gentleman, he was by nature too impudent to be really well-bred—as he showed in the House of Commons.

Something has been said already of this same grossness, and I am afraid that we cannot hope to get rid of it altogether at any time within our limits. But we can dismiss it, in so far as it was displayed in mere bad language, at once. Quotation is not possible, and would be at least as tedious as disgusting. The range of naval invective was limited. We rarely meet an instance of any novelty or originality. I have been almost grateful to Lieutenant Wilkinson of the *Ludlow* who, in 1699, was dismissed the service by a Court Martial sitting on the *Ranelagh* at the Nore. He was drunken, violent, and standing on the quarter-deck and bawling at the top of his voice, he called his captain "a vile trooperly fellow." What he precisely meant I do not undertake to say. The Court Martial judged his language to be "scurvy." At least Mr Wilkinson had originality enough to go beyond the standing accusation of a

certain vice, and the usual invitation to render an unbecoming mark of deference. The accuracy of Smollett's observation of naval manners is illustrated by the fact that the recognized term of abuse for a midshipman was "snotty." In 1795, Mr Locke, boatswain of the *Rattlesnake* at the Cape of Good Hope, was ordered by the second lieutenant, Mr Coffin, to desist from beating a midshipman. He replied that he was only thrashing a "snotty midshipman." Locke was reduced by the Court and ordered to serve as a common sailor. As late as 1805 an officer of marines and the purser of the *Princess Charlotte*, stationed in the West Indies, scolded one another like fishfags on her quarter-deck. The Court Martial before which they both came, dismissed the case on the ground that the answer made by the marine was "extorted" by a question of the purser's. The Court added that they could not but deplore the use of such language on the quarter-deck of one of His Majesty's ships. So may we, but used it was, and now we have said enough of an unsavoury subject.

That gross conduct should go with gross language was inevitable. The use of it indicated an inward vulgarity and tendency to violence which was certain to interpret itself in act. Examples may be found where it would seem they ought least to have been expected. In 1771, the Reverend Richard Green, chaplain of the *Prince of Wales*, then at Portsmouth, landed on leave. He took with him the sword of the first lieutenant, Mr Leek, which was to be fitted with a new scabbard. When Mr Green returned at night he was in liquor, and was also manifestly quarrelsome drunk. Mr Leek having asked what he had done with the sword, the "padre" chose to assume that the lieutenant

suspected him of having sold it. He began by asking him furiously whether this was the case, and went on to abuse and a challenge to fight. Mr Leek replied, with exasperating self-possession, that Green's language and demeanour were very unbecoming to his cloth. The chaplain then grew so disorderly that it was necessary to put him under arrest. He was in due course brought to Court Martial and dismissed the service.

It may be noted—parenthetically and with regret—that the reports of Courts Martial go far to confirm an opinion given by Nelson in a letter to his brother. William Nelson thought of endeavouring to obtain the post of chaplain in the Navy, but Horatio, who at the time was captain of the *Boreas*, dissuaded him vehemently, saying that the position was a miserable one. And miserable were many of the representatives of the Church who were driven by need to take it. The charges too often brought against them, and judged by Courts Martial to have a shameful probability, are protected by their character from quotation.

No rank was exempt from this tendency to pure brutality. In 1779, at the beginning of the American War, Captain Allen of the *Egmont*, whose ship was in the dockyard, landed for a couple of days. He gave strict orders that no leave was to be granted during his absence. As he was returning to his ship he met his surgeon, Mr McLellan, on the wharf. The surgeon had applied for leave to the officer commanding in Allen's absence, to land for the purpose of speaking to the captain, and had obtained it. The captain asked him how he dared to be ashore without leave, and when he replied truthfully that he had permission, called him a liar and struck him with a cane. The surgeon, whose

name shows that he came from a race of no great patience, retaliated with his walking stick, and a bout of cudgel play took place. Captain Allen was well trounced in the presence of what appears to have been an appreciative audience. The story does not diminish in interest as it goes on. The infuriated doctor was hustled back to the ship by the captain, with the help of some of the other officers. There was, as was natural, a lively exchange of heated rhetoric. Yet it was not at once that Captain Allen decided to apply for a Court Martial on his subordinate. When he did the charge brought was only the use of provocative language. The reader will not be surprised to hear that the formal charge takes a modest place in the evidence given to the Court, which is mainly concerned with the rencounter in the dockyard. Something was said of the provocative language. The captain described the surgeon as being at all times contentious and pragmatical. Mr McLellan repudiated the accusation in his defence, affirming that he had always lived on good terms with his brother officers, and adding, not unhandsomely, that Captain Allen had hitherto treated him with kindness and confidence. But the exchange of blows was the real subject considered and discussed. The surgeon dealt with it in his defence in becoming terms. "The words," he said, "which Captain Allen uttered were both contumacious (*sic*) and contemptuous, words of insult, and the completion of them was so insulting and ignominious to me that I could not help returning it; and that decent pride that feeds and protects the virtue and honor (*sic*) of a gentleman taught me to revenge it."

The Court reprimanded the surgeon for using

provocative language—and then instructed the Deputy Judge Advocate to read him a paper in which he was solemnly told that it was fortunate for him that no other charge had been brought, for if he had been accused of “returning a blow under any pretence whatever to your superior officer, the Court must under the article of war have condemned you to death.”

There is something absurd in the story of Captain Allen and his surgeon, and yet it is serious enough. We need not labour to prove that the conduct of the captain, in first making an unfounded charge of mendacity against his subordinate, and then striking him in the belief that he would not dare to retaliate, cannot by any stretch of charity be brought under the head of “behaviour of a gentleman.” Observe that, by the manners of the time and the code of the class to which he could claim to belong as a King’s officer, Allen was guilty of an action wholly different in character from the giving of a blow to a common sailor. “The poor man,” said Dr Johnson, “has no honour” and is not disgraced by a blow. The surgeon, a King’s officer, a member of the Ward Room Mess, could be the host or guest of his captain. He was entitled to the “satisfaction of a gentleman,” and by treating him with contumely, in reliance on his inability to retaliate, Allen showed himself to be both a coward and a blackguard. Now by the very articles of war to which the Court referred in the paper read by the Deputy Judge Advocate, the captain rendered himself liable to be brought to Court Martial. The 23rd article renders “any Person in the Fleet” who “shall quarrel or fight with any other Person in the Fleet or use reproachful or provoking Speeches or Gestures tending to make any

Quarrel or Disturbance" liable to punishment. It could not be denied that the provocation by word and gesture came from Captain Allen. Yet the Court expressed no disapproval of his conduct, and the commander-in-chief did not bring him to Court Martial. The encounter in the dockyard must have been the common talk of Portsmouth and Gosport.

It is impossible not to think that the authorities had come to the confused conclusion that something must be done, and as usual did something foolish. They did not wish to try Captain Allen for fear that they would weaken discipline. They shrank from bringing McLellan to Court Martial under the 22nd article, which forbids all striking of a superior officer, because he was entitled to be treated "on the footing of a gentleman," and because Allen had put himself in the wrong. So they fell back on the feeble middle course, and tried him for a minor offence which would render him liable to a merely formal penalty. They would, in fact, enforce neither the discipline which is based on the impartial application of the same law to all men without respect to persons, nor that inferior discipline which tells the subordinate that he has no defence against any wrong inflicted on him by a superior. In the meantime it was certain that, if a petty officer or common sailor had returned Captain Allen's blow with interest, there would have been no hesitation in bringing him under the 22nd article. Naval Court Martial could be seen in fact to have two weights and two measures, and, at a time when the voice of freedom was reciting the rights of man from the other side of the Atlantic, that was a spectacle which was bound to have its effects.

When such examples were set from above, they

were naturally enough followed below. At the close of the American war the *Marlborough* was at Port Royal in Jamaica. One of her master's mates, Benjamin Lee, had been ashore on leave, and he returned in the same condition as the chaplain of the *Prince of Wales*. When on board he began making a noise in the cockpit and capped the disturbance by firing a pistol. The officer of the watch, Lieutenant Hillman, an American loyalist, ordered him to be quiet. The master's mate answered with the insolence of intoxication that "any man who was an American and left his country was a coward." Mr Hillman, weakly enough, replied, "Remember I am an officer." To this Lee made the reply that "The only excuse a coward could make was telling a man he was his officer." He then challenged the lieutenant to come aft, and show if he was seaman enough to "make the bilboes fast to the deck." He added that Hillman was a "refugee." When he saw that he would be put in irons Lee hid himself in the cable tier, taking pistols with him, and was with difficulty secured. He was condemned to be hanged.

The furious misconduct of Benjamin Lee is a reminder that, if the discipline of the Navy was enforced by ferocious penalties, it had to be maintained over many unruly natures. This was inevitably the case so long as men were forced into the service by the press, often to their great loss. Impressment must be dealt with by itself. It was too great a part of the old Navy to be treated incidentally. But there was a far worse source of supply than the press. The same need for men which compelled the Admiralty to permit, or even to encourage the entry of foreign prisoners of war, drove it to go to the jails. Felons were allowed to escape

imprisonment or the gallows by volunteering for the Navy. Firm and consistent discipline alone could have controlled these coarse elements. We may assume that firmness and consistency were not lacking in the case of those ships whose names do not appear in the reports of Courts Martial. But there certainly were vessels in which they were greatly to seek. Everything depended on the captain. My impression is that even strict and vigilant officers were not extreme to note disorder and drunkenness unless they stopped the work of the ship. When violence went to the length of knocking down the master at arms, or threatening the boatswain, it was punished. So was drunkenness when it incapacitated a man from doing necessary work. While they stopped short of these extremes they were tolerated. The amount of toleration would depend on the character of the captain.

A Court Martial held on board the *Britannia* at Spithead, on the 6th October, 1779, is of exceptional value for the insight it gives us into the discipline of the Navy of the eighteenth century. The charge was one of "Mutinous Assembly," brought against William Newman and William Waits, two sailors of the *Phœnix*, by their captain Sir Hyde Parker. He is familiar to all who know aught of the history of the Navy, for he was the Sir Hyde Parker of later days who was sent to dry-nurse Nelson in the Baltic. The Court was a peculiarly strong one. Vice-Admiral Darby was President. It included Rear-Admirals Digby, Graves and Sir John Lockhart Ross, and Captain Edmund Affleck, all distinguished officers.

By a significant piece of carelessness Hyde Parker's application for a Court Martial was dated the 2nd July,

though the alleged offence had been committed on the 20th. The captain accounted for the error by a mistake on the part of his clerk. The charge he brought was that, on the 20th July in the forenoon, Newman and Waits had come aft to make a complaint against the boatswain, who, they said, had ill-treated them, and that they were followed by some sixty of the crew in a tumultuous fashion. Parker considered their complaint as frivolous and ordered them to be put in irons. He told the others to return to the fore-castle. It was allowed by himself that the two prisoners were respectful in their behaviour to him, and that the others obeyed at once. But it was alleged that Newman was drunk, and that he and Waits had been heard to call for volunteers to support them. Here, it would seem, was a sufficiently simple issue. All that was necessary was to show that the complaint was frivolous, and that the two men had called on the crew to support them. It is also obvious that the boatswain was a most material witness. But no evidence of the appeal was given, and though the proceedings are full of what the boatswain, Mr Holles, said and did, he was never produced before the Court.

As a rule Courts Martial were honourably free from the besetting vice of muddle headed and amateur judicial bodies—that is to say, the fault of turning a trial of a definite issue into an inquisition on the whole character and conduct of the accused. But this was a signal example of an evil practice. In a few moments Captain Parker began to wander away from the mutinous assembly of the 20th July, and to ask whether Newman and Waits had not frequently been drunken and disobedient. The witnesses did not in any case fully confirm the captain, but enough was said to

convince the reader that disobedience and drunkenness were not unusual in the *Phoenix*. Sir Hyde would hardly have cared to bring this out so clearly before Darby, Digby, Graves, Lockhart Ross, Affleck and the others, if he had thought that it was unusual, or discreditable to his capacity for maintaining discipline. After no small amount of wandering into irrelevances, and of what "I heard" and "he said," Parker's inquisition gathered itself together and concentrated on a particular incident which occurred six months before the affair of the 20th. This was the fall of a shot down the hatchway and on to the boatswain, at a time when the *Phoenix* was at sea in rough weather, and was rolling heavily. He made an attempt to obtain from his witnesses answers tending to show that the shot was thrown by Newman or Waits, or both of them. Whatever the conduct of the men may have been they were no fools. They put the two searching questions which would have been put by competent counsel. "Are you sure the shot was thrown and did not fall out of the locker by accident? Did you see me have anything to do with it?" None of the witnesses would affirm that the shot was thrown, nor that the prisoners were concerned in its descent on the boatswain. Having done just what was necessary to ruin the Captain's little edifice of suppositions and insinuations, Newman and Waits wisely held their peace. Parker spent some time in labouring to prove that he had not ill-treated them while they were in confinement, that he had dismissed two petty officers for acts of brutality, and that the boatswain was never seen to carry any instrument of correction heavier than a rattan. When Sir Hyde had finished his case, the prisoners made their defence in few words, and to the

point. Newman said that he had been on deck all the morning, and that, when he had gone below, the boatswain sent for him and asked why he was not on deck. Upon his replying that he had been there all the morning, Holles shouted "I will teach you to answer me," and beat him savagely. Waits told a similar tale. Both denied that they had called upon their messmates to support them.

The discussions of Courts Martial were secret, and therefore we do not know what Darby and the members said among themselves. But as they declared the charge unproved, and acquitted the prisoners, they cannot have believed that there had been any "mutinous assembly." If we could know what they thought, we would almost certainly discover that in their opinion the affair of the complaint had been exaggerated in the hope of bringing the two men to punishment in revenge for the suspected attempt to murder the boatswain, of which they were not formally accused. That this was precisely the case must be the conclusion of any reader of the report of the Court Martial who is qualified to judge what constitutes evidence.

An element of the old sea life which had its influence on discipline was the presence of women in the ships. By a regulation issued in the reign of William III no women were to be carried, but it was no better obeyed than many others. Nelson affirmed that in the War of American Independence, captains who could rely on influence at the Admiralty had no scruple in disobeying. He is borne out by Rodney, who candidly states that he abstained from bringing to Court Martial one of his captains, because that officer's wife and daughters, who were with him, were "amiable women." Observe

it was not their presence which was the offence. Lillingstone declares that Wilmot took two women with him to the West Indies. The Spanish prisoner who told Captain Mends of the *Diligence* of the mutiny of the *Hermione* (1797), said that seven women who were in the ship had been murdered—and the English captain says nothing to show that he thought the Spaniard must be wrong. But most readers may remember the case of Captain To in *Peter Simple*. It is certain that officers who had no superior to check them, or were sure of toleration, took their wives, and women who were not their wives, to sea with them long after 1815. Nor was this disregard of a regulation shown only in the case of superior officers. The records of Courts Martial prove conclusively that, so long as ships were in home waters, many women lived in them, and had quarters assigned to them with their husbands. We have the word of Captain Thompson, "Poet Thompson," for it, that in the West Indies and in the earlier eighteenth century hundreds of negro women were allowed to live in men-of-war. It would not be difficult, if it were desirable to do so, to name the reason which induced captains to tolerate a practice not compatible with good discipline. That reason was no doubt present to the minds of the members of a Court Martial which, in 1787, tried Mr Jerrard, first lieutenant of the *Scipio*, for disobedience to orders. He was in command during the absence of his captain, who had given directions that no communication with the shore was to be allowed. Mr Jerrard had not only granted leave, but had permitted women to come aboard. The Court dismissed him from his ship, but recommended him strongly to the Admiralty, partly on the ground of his

good service in the late war, and also because the members did not think he acted out of a spirit of indiscipline, but from kindness. They could go no further with decency in an official document.

Here, as in most cases, it is necessary to distinguish and divide, lest we confuse dissimilar things. Captain John Cranby, of H.M.S. *Poole*, was accused in 1697 by his surgeon, Mr Muirhead, of various "irregularities." He had used his ship for the purpose of carrying goods and horses in and about Madeira. Incidentally it was stated (and Captain Cranby did not deny) that when he left England, he entered as captain's servant one Mistress Ellenor Tibbetts, who while she was in the ship caused "abundance of disturbance," and was finally discharged at Cadiz. The Court acquitted him of the charge of trading, on the ground that he had carried the goods and the horses at the request of our allies the Portuguese, but said nothing as to Ellenor Tibbetts. We may be sure that she was there, and that Captain Cranby had no lawful authority to enter her on the ship's books and rate her captain's servant, whereby she would become entitled to pay and rations at the King's expense.

Ellenor Tibbetts was on a very different footing from the women who appear in a miserable tale which ran its course in 1779 on board the *Alexander*, then commanded by Kempfenfelt, at Portsmouth. William Kirke, son of a bumboat woman, was one of the *Alexander's* midshipmen. The reader must not suppose that Kirke was either a young lad, or that there is anything extraordinary in the fact that the son of a bumboat woman should be rated midshipman in a line of battle ship in 1779. He had served in several vessels

with a good reputation, and was a married man. At the beginning of all our eighteenth century wars, when the Navy was to be suddenly raised from a peace to a war footing, men whose birth was no more exalted than Kirke's were not seldom promoted to a lieutenant's commission. He was in "a very fair way" in the ship, and may have looked forward to one day winning a commission. He and his wife shared a berth—a space marked off by canvas partitions on the lower deck. On the 5th of March his mother came on board the *Alexander*, and told him that she meant to apply to the first lieutenant for leave to sell "certain things" in the ship. The certain things no doubt included liquor. Kirke expostulated with her, saying that it was hard for him that his mother should sell the things in a ship where he was "in a fair way." There was no question of snobbery, of any shame to be known as the son of a bumboat woman, or any wish on Kirke's part to repudiate his mother. His complaint was that she would sell her goods in a vessel where he had rank, and it was a reasonable one, for the goods most assuredly included liquor and might lead to trouble. The woman retorted by a torrent of abuse of her son and his wife. The daughter-in-law went away, and Kirke also left his mother. He told in his defence how he spoke and drank with some of his friends in the ship, how his mother returned and told him how she had applied for and obtained leave to sell, and then sitting down outside his berth resumed her tirade of abuse, and threatened to have him sent to prison. He knew what she meant, for he owed £29 in Gosport. At last, when the woman's rancorous tongue had wrought him to a paroxysm of rage, Kirke seized a "hanger," that is,

dirk, and drove it in under her left breast, so deep, said the surgeon, that the wound "received the whole length of the probe." She died on the deck in the arms of Sarah Green, wife of one of the sailors, who came to her help with Eleanor Carter, wife of one of the quarter-masters. Both lived with their husbands in the ship.

Kirke was not sent to the assizes, but was tried by a Court Martial on the *Britannia*, presided over by Commodore John Evans, and including among the twelve captains who sat on it, Moutray, Sir Richard Bickerton, Sir Charles Douglas, who was Captain of the Fleet, Cranston, who was to be Captain of the Flagship at the battle of Dominica, and Adam Duncan, the future victor of Camperdown. The Court could come but to one decision, and Kirke was executed on the 29th March. Though he pleaded that he had acted in blind anger, meaning only to terrify and not to kill, he knew his fate from the first. All the witnesses spoke well and kindly of him. The master's mate, Conduit, who was one of the witnesses, found Kirke frantic after his mother's death, and told him that there was nothing for him to do now but to make his peace with God. But before they parted, Conduit asked to shake hands with his unhappy messmate. Kirke held out his right hand, then drew it back, and offered the hand which was not wet with his mother's blood.

In 1783 a Court Martial, held in the Hamoaze, dealt with a case which illustrates the mischief which came from allowing the women free access to ships, and also shows that the Navy was beginning to modify its belief in the right of an officer to strike the men. The prisoner was one Shields, sailmaker of the *Ottar* sloop. A great deal of drunkenness had lately disturbed the discipline

of the ship, and it was accounted for by the fact that the wives of the sailors who were allowed to visit and live with their husbands had smuggled liquor on board. Mr Larcom, the *Ottar's* lieutenant, ordered Mrs Shields, who had just come aboard, to be searched. Her husband, who probably knew very well that his wife was smuggling drink, interfered and declared that he would not allow her to be searched—not, it seems, so much because the search, which would be carried out by the master at arms, was an indignity and an indecency, as because the other sailors' wives had not been. Larcom, provoked by the man's resistance, struck him, and then Shields "put himself in something like a posture of defence." He, in fact, squared up. The Court sentenced him to a flogging of only fifty lashes (a trifling penalty indeed at a time when from a hundred-and-fifty to four hundred lashes were often given for offences less serious than threatening to strike an officer) because it disapproved of Lieutenant Larcom's blow. So would not have said a Court Martial sitting twenty-five years before the end of the American War of Independence.

It was in fact just one year less than twenty-five before that date, in 1759, that a Court Martial sat on the *Yarmouth* at Bombay* to try two lieutenants of the *Salisbury* for abusing and assaulting James Wilkinson, acting Master Builder of the fleet, then commanded by Sir George Pocock, in the East Indies. The names of the prisoners were Harris and Dring. Stevens presided, and Kempenfelt was one of the members of

* The strict service and minute critic is much concerned to make us understand that "in" and not "on" a ship is the orthodox form. So it no doubt is to-day. But so it was not in the eighteenth century, when men were "on board" or "on" or "of" a ship, but not "in" her.

the Court. Mr Wilkinson, who held a Carpenter's warrant, was an elderly man. He had been appointed to act as Master Builder in the previous year, and his position was perfectly well known. In December the fleet had come round from the Coromandel coast to the Malabar, to avoid the dangers of the north-easterly monsoon in the Bay of Bengal. It had met very bad weather while coming round Ceylon. The *Salisbury* had suffered severely, and was known by her officers and crew to be in a bad state below the water line. It was Wilkinson's function to inspect her and report on her condition. He came aboard for the purpose. He ought to have reported himself to her captain, but omitted to perform that ceremony. When he came on the quarter-deck, Harris, who was first lieutenant of the *Salisbury*, began to talk with him, and to discuss the state of the vessel. In the course of the talk he made a remark which perhaps explains what follows—"Remember," he said, "that hundreds of poor men's lives are in this ship." Wilkinson replied that he had no doubt that it would be possible to repair her thoroughly, and he added that, after all, she was in a better state than the *Cumberland*. Harris asked him if he would guarantee that the *Salisbury* would live through such another storm as she had lately met. To that Mr Wilkinson made the apparently very sensible answer that neither he nor any man could declare it a matter of certainty that the ship would survive a very violent storm. Mr Harris and Mr Dring then broke into violent abuse, calling Wilkinson drunkard, liar, and "no tradesman," *i.e.* artificer*.

* Tradesman had not then (and has not universally now) the meaning of shopkeeper, but of a man who had served his time to a trade.

The carpenter went forward very angry, and muttering to himself under his breath. Somebody reported that he had been growling threats against the lieutenant. Harris sent for him, and, as Wilkinson stood before him bareheaded on the quarter-deck, pointed his cane at his mouth, and first called on him to repeat what he had said, and then threatened to strike him if he uttered "any answer out of his mouth." When Wilkinson expostulated Harris drove his cane into his mouth and wounded him. The carpenter took a boat to leave the ship but was arrested by order of the captain of the *Salisbury*, who was angry that the official visit had not been reported to him. When at last the case came before a Court Martial, the carpenter was reprimanded for not reporting himself to the captain of the *Salisbury*, and the officers were reprimanded, not for bullying a subordinate who was unable to defend himself, but for pretending not to know that he had the authority of Sir George Pocock. Messrs Harris and Dring were plainly such gentlemen as Thompson had in his mind when he said that in the late *i.e.* The Seven Years' War a cane and a plug of tobacco were all that were required to qualify a man to be a lieutenant in the Navy*.

* I do not advance Thompson as an impeccable authority. The abilities of this naval officer of literary leanings were not remarkable, and he had fallen under the influence of Churchill, a considerable figure in English literature, but withal a blackguard of letters. There is also in his work a pretty obvious imitation of Ward. Much of his writing is noisy, empty and more than a little blackguard. "Yet even calumny is sagacious enough to discover and to attack the most vulnerable part." Such a story as this of the lieutenants of the *Salisbury* and others I have told, and many others I could tell, are enough to prove that if the naval officers of the first half of the eighteenth century had seamanship, and personal courage, they had also far too often the low morality, the brutal manners and the love of bullying, which are to be found among the lowest of skippers in trading ships and river barges.

I wish to say no more than a regard for truth compels me to say of this revolting side of the old Navy life. The reports of Courts Martial would supply a long list of cases of bestial cruelty. But it is not necessary to insist on what nobody who will take the trouble to go to the proper source for his knowledge can deny. Enough has been said to make it superfluous to repeat the story of that Captain Hervey, a member of the Bristol family, and captain of the *Superb* in the West Indies in 1741, who knocked an old sailor down and kicked him so savagely that he died of his injuries, and who kicked his gunner in the stomach so as to cause a rupture. We need not tell how another captain half murdered his servant ; how a lieutenant in the East Indies who suspected a native servant of robbing him, tied the man up and flogged him, or caused him to be flogged, at intervals all day till he died ; how a master's mate knocked the purser's steward down on the quarter-deck, and, when he was down, kicked his eye out, and so forth. Enough has been said to show that the reputation for ruffianism, which most undeniably attached to the character of naval officers of all ranks, was not undeserved. If any man disputes my statement, the reports of Courts Martial are open to him. He can, if he will take the trouble, satisfy himself how far the satirists were wrong, and I am mistaken.

If it occurs to any one to reply that the offenders were brought to trial and punished, I say—in the first place, that even if the cases in which trial and punishment followed were all that occurred, they were shamefully numerous ; in the second place, that nobody can make an honest examination of the evidence without

learning that these cases were the minority of the acts of cruelty actually committed, and that, as a rule, the excess which brought a man before a Court Martial was the culmination of a long series of similar outrages ; and in the third place, that the penalties inflicted were shamefully light. At a time when a sailor who was guilty of very trifling acts of disobedience was punished with fifty lashes, Captain Hervey was not brought to trial for the murder of the man Adams. Nor was the lieutenant who flogged his servant condemned for murder. The master's mate who kicked out the eye of the purser's steward was only sentenced to serve as a common sailor—which to be sure rendered him liable to be thrashed and kicked, with the certainty that, if he retaliated, he would be fortunate to escape with three hundred lashes. If I thought that what these cases show was all the Navy, or even all the Navy with the addition of a sufficiency of brute courage, my interest in it would have been dead long ago. Assuredly it was not all. There were, I prefer to believe, many officers who carried a rattan because it was the custom, and who chewed tobacco, whose roughness of manner covered a kind heart and a manly disposition, but the brutality of act was there and was very common. The coarseness of manner was there and was nearly universal. Neither must it be assumed that this callousness was shown only in assaults.

In 1778, the first year of the War of American Independence, Joseph Hall, the gunner of the *Hornet* in the West Indies, was brought to Court Martial for disobedience. The story told by his captain, who prosecuted him, is nearly as revolting as any of the cases I have mentioned. Hall, a man who had served

for years with a very good character, was ruptured while helping to set up a new mast. He obtained a truss from the surgeon and returned to his duty. Two months later a press of work had again to be done, and the gunner wrought for two days without rest at watering the ship. At the end of that time the captain ordered him to go ashore, on the same duty. The man, worn out and unable to go on any longer, refused to obey. The captain was compelled to keep a watch himself for two days. Several officers, of whom Collingwood who served as lieutenant in the *Hornet* was one, gave Hall a high character. The captain, Haswell, had nothing to say against him except that he was liable to be "capricious" at the "full and change of the moon." The Court after guarding itself by recording its belief that "disobedience of orders" is "a most unpardonable crime," only reprimanded the gunner. It was lenient in consideration of "the great fatigue of the duty which he had just returned from having performed, and the infirmity he labours under, so recently received in active service." The proper course would surely have been to order a medical examination, and if the gunner was declared to be physically incapable of performing his duty to send him home with a recommendation.

These manifestations of inhumanity were more common in the earlier than in the later parts of the eighteenth century. When we reach the end and come to the year 1800, we begin to meet cases in which warrant officers were brought to Court Martial for disobeying the standing order of the ship, which forbade them to strike the men. The revolt of the Colonies, the French Revolution and the "breeze at Spithead" of

1797, had "passed by there." Even so it must be understood that the improvement was slow, was not universal and was at all times very relative. In 1794 one Squirrel, yeoman of the sheets in H.M.S. *Thetis*, was brought to Court Martial at Halifax on a charge of disobedience and insolence. His offence was that having been ordered by the boatswain to go below and thrash the men up, he replied that he would order them up but would not thrash them. Then the boatswain, saying he would teach him to answer, rushed at him, and beat him savagely. The Court sentenced Squirrel to receive only 100 lashes, because they disapproved of the boatswain's blows. Now the disobedience lay in refusing to thrash the men, and the insolence in saying so. There was hypocrisy, and that of a very ugly order, in disapproving the boatswain's violence, and yet inflicting a cruel penalty on the man who declined to do the very thing which the warrant officer was mildly rebuked for doing. Even such restraint on brutality as was slowly introduced was not to the taste of all officers. We catch echoes of grumbling against the decline of the "good old discipline of the Navy." In 1800, Mr Robertson, surgeon of the *Intrepid*, was Court Martialled and dismissed at Madras for asserting that the captains of the Navy had now become republicans, and favoured the men against the officers*. It is highly probable that much grumbling in mess rooms and round the tubs when the officers were

* The good old discipline continued to be regretted for long. I have an amused recollection of having heard a youthful midshipman speaking in a gunroom mess, some forty years ago, declare that he ought to have the right to flog any man in his boat. If that young gentleman sees these pages and remembers the incident, he will no doubt share my amusement in his youthful opinions.

“ drinking tobacco ” comes to us in a faint and ghostly echo by the mouth of Mr Robertson. He was tried by captains to whom he injuriously attributed dangerous political opinions.

The case of Squirrel tells us what the mutineers at Spithead had in mind when they protested against the infliction of corporal punishment at the discretion of inferior officers. I have never found any evidence that flogging, as a punishment given for proved offences against discipline or good order in the ship, was looked upon as a grievance. On the contrary when inflicted by a captain who, however severe he might be, was just, it was considered by the best elements in the crews as their protection against the unruly spirits swept into the fleet by the press, or the criminals imported from the jails. What was resented was the cudgelling and canings by the lower ranks of officers who, like the immortal type of their kind the Prefectus Castrorum of the Legions of Pannonia whose nickname was “ bring another ” (*i.e.* stick), were ruthless because they could now inflict what they had once endured.

So long as the punishment was not believed to be in itself barbarous, even by those who endured it, so long as it was not inflicted erratically, in revenge, or to indulge rage, it must be held to be excused by the beliefs of the time. The evil was that the guarantees were lacking. There was no definite rule, no list or return of the punishments inflicted, the entry made in the log was no check, a refusal to submit rendered the recalcitrant seaman or marine liable to trial by Court Martial, which was apt to order floggings of monstrous ferocity. The power to cause pain is to some natures a temptation. In all races there are men who can sink

to " that last stage of human depravity, when cruelty becomes pleasure for its own sake ; when the sight of pain, as pain, where no advantage is to be gained, no offence punished, no danger averted, is an agreeable excitement." Macaulay had just said that Suraj-ud-Dowla, of whom he was speaking, " indulged immoderately in the use of ardent spirits, which inflamed his weak brain almost to madness." There were men in the Navy who in their tendency to make a sport of torture, and in bestial drunkenness, were nowise superior to the wretched Nawab of Bengal. The possession of practically unchecked power by such creatures could not but lead to abominations. The depravity of the Suraj-ud-Dowla of any colour grows by what it feeds on. Ferocity of punishment in the Navy increased amid the dull grossness of the early eighteenth century.

In 1696, John Jeffcott, first lieutenant of the *Plymouth*, was brought to a Court Martial on board the *Queen* at Spithead for whipping to death a seaman of the name of Walters. The man's offence was that he had stolen a coin from a brother seaman. It was one which would effectually deprive him of the sympathy of his messmates. The punishment ordered was either 15 or 21 lashes. The number inflicted was 21, but Walters before his death complained that the boatswain's mate, Webb, who flogged him, had given him six lashes unfairly. There was enmity between the two, for Walters had called Webb "cucold," and the boatswain's mate is said to have expressed his pleasure at having his enemy under his lash. The Court, of which Shovell was President, acquitted Mr Jeffcott on the ground that the " punishment was not unusual for

such a crime," and that there was nothing to show that it was the cause of death. As it appears from the testimony of one of his messmates that Walters was allowed to drink four or five bottles of wine a day while lying in after his punishment, the Court was probably right after a fashion. Webb, who had in the meantime been named boatswain of a Bomb, was not summoned before the Court.

In this case the punishment was not excessive according to the practice of the time. Flagellations of equal and greater severity were inflicted ashore for such offences, not only on men, but on women. Yet we see that as the man died soon after he suffered, the officer who caused him to be punished was brought to Court Martial for cruelty. Fifty years later the number of lashes given to a sailor or marine who committed the same mean offence as Walters' would have been much higher, and I know of no reason for supposing that his subsequent death would have been followed by a Court Martial on the officer who ordered the punishment.

It must not be supposed that all Courts Martial tell grim stories of ferocity in the enforcing of discipline. There are some which are also comic, but not therefore less illuminative. The trial of Mr Carleton Smythies, acting first lieutenant of H.M.S. *Janus*, at Port Royal, Jamaica, on the 5th August, 1785, is a good case in point. The *Janus* had a young staff. All her lieutenants are described as "Acting," and were presumably young gentlemen who had completed the five years' service required to qualify them for a commission, but had not yet been "made" by the Admiralty, that is to say, confirmed in the rank. Their names

were Smythies, Church, Wellan and Foote*, and their conduct was young. It may be added that their captain set them the example.

The charge against Smythies was insolence and disobedience. A good deal was said concerning his disregard, and his suffering disregard by others, of the captain's orders as to the hours at which fires and lights were to be put out. It was also alleged that in the middle watch, on one occasion, he spent about an hour sitting on the foremost skylight with "his feet in the pigeon hole of the binnacle, and his back against the foremost standard of the wheel in the attitude of being asleep." To sleep on watch was a serious offence, and in this case it had led to Mr Smythies' neglect to inform the captain of a change of wind. Yet when the captain came on deck, though he expressed his annoyance at the neglect of Mr Smythies, he did not put him under arrest. He only told him to leave the deck, and did not go further till his acting first lieutenant began to wrangle and to chop logic. Smythies practically forced his captain to put him under arrest. He was plainly a foolish man, and he showed his folly in a way fatal to himself, for as soon as he knew that Pakenham would apply for a Court Martial on him, he wrote to the commander-in-chief of the station, Rear-Admiral Innes, to apply for a Court Martial on his captain. Yet, as we see, the charge was not one of sleeping on watch, and it is quite clear that, if there had not been other causes for the captain's anger, this incident would have been passed over. It soon becomes obvious that Captain Pakenham was offended mainly

* Foote was the captain of the *Seahorse* who was with Nelson at Naples.

because Mr Smythies was in the habit of turning away smiling ambiguous smiles whenever he received orders. This revelation startled the Court. It asked Mr George Reynolds, the witness who reported the acting lieutenant's slumbers on watch, and also the smiles, whether they expressed approbation or contempt. There is something very pleasing in the vision of a first lieutenant who could retire absolutely beaming with approbation of the orders of his superior. Mr George Reynolds, who described himself as having served the King for 25 years, was apparently one of the unfortunates who went on as over-grown midshipmen, or middle-aged mates, in the vain hope of earning the lieutenant's commission which never came. He may have been an embittered man. He answered that Mr Smythies' smiles were sometimes of approbation and sometimes of contempt. Reynolds was borne out by Mr John Colhoun, the surgeon, and Mr Gueran, the gunner, and by Mr Walter Wellan, one of the lieutenants, who excused Mr Smythies on the ground that he was forced to laugh by the "antic gestures" of Foote and particularly Church. This filled the measure for the Court, which asked whether these "entertaining and facetious gentlemen" were not aware that their "mummery and mockery" were incompatible with discipline. The witness thought they did not mean any harm.

When the court rose on the conclusion of the first day of the trial, it wrote a letter to Admiral Innes stating the facts, and putting the question whether further proceedings would not be required against Mr Church. On the second day the Court began by telling the witnesses that they appeared to be engaged

in concocting false evidence, and it caused to be read to them the act made and provided for dealing with "perjury and prevarication" in Courts Martial. The inquiry into the mummery and mockery went on. It was pretty well shown that Mr Church was the funny man of the *Janus*, and that his practice of putting himself into laughter compelling contortions and postures, in mess and on deck (presumably behind the captain's back) had become a nuisance to some of his brother officers. And something else was shown—namely that Captain Pakenham himself had a pretty turn for buffoonery. Mr Foote stated that on several occasions when he was on watch and was conning the ship, he had been made "to laugh exceedingly" by Captain Pakenham's wonderful skill in "taking off" Mr Wellan and the quartermaster, Hole. Foote's answer probably explains why Admiral Innes did not think it proper to go any further. He could hardly have stopped at Mr Church. Captain Pakenham was a "fiddler," and the consequence was that his ship was "d—y out of tune." Nelson's phrase is adequate to the case. The worship of "the great Goddess nonsense" has been approved by the wise, but *in loco*; and the quarter-deck of a man-of-war, when duty is being carried on, is not the right *locus in quo*. Mr Smythies paid for all. He was dismissed the service on which, as he sadly said in his defence, he "had his whole dependence." It is impossible to be very sorry for him for he was plainly not equal to his place. But neither was Captain Pakenham who set the example of buffoonery.

CHAPTER III

IMPRESSMENT, PLUNDER AND FALSE MUSTERS

Nothing in all the history of our Navy is more familiar to our memory than the fact that it was recruited by "the Press Gang." By a process which is very natural, though uncritical and even unfair, impressment has come to be associated with the Navy alone. Yet during centuries it was quite as much used for the purpose of raising soldiers, as to compel the services of seamen. Everyone may be supposed to remember how Falstaff pressed the men with whom he refused to march through Coventry. Everybody does not remember that soldiers were obtained by the same means as late as the War of American Independence. But the press ceased to be used for the Army some two generations before it was given up for the Navy, and its final stage is, intelligibly enough, that part of its history which is remembered. To judge from not a little we can find written, it is supposed that the Navy was wholly manned by means of the press. This however was far from being the case. Before we can understand what share that clumsy and ferocious method of recruiting crews had in our naval history we must first see what were the component parts of the crew of a man-of-war, and then what classes of persons were legally liable to be taken by force to serve the King at sea.

The crew of a man-of-war was composed of three elements; the men "bred to the sea," or "Prime Seamen," commonly spoken of by themselves as "Sailormen"; the landsmen or waisters; and the sea-soldiers or marines. The classes liable to be pressed for the Navy were the men bred to the sea, and all those persons defined as Rogues and Vagabonds by the act of Queen Elizabeth for the Suppression of Vagabonds (39 Elizabeth c. 4), and by the act of Queen Anne (2 and 3 Anne c. 6), for the Encouragement of Seamen.

Soldiers of the Army could be, and were even as late as the Napoleonic Wars, drafted to serve as marines. It is to be observed that, when they were, the women "on the strength" accompanied their husbands. The corps of marines which we know now dates from the Seven Years' War. It had been preceded by temporary bodies. As a general rule no great difficulty was found in recruiting for the marines. Landsmen and waisters could commonly be obtained by voluntary engagement, stimulated by the offer of bounties. It must not be forgotten that, apart from the marines, all the ship's company were officially "seamen." Parliament voted money for so many "Seamen and Marines." Whoever was not a marine was in the eyes of the Admiralty a "seaman." When the Navy was at full war strength, the number of men mustered by that name was largely in excess of the whole seafaring population of the country. In fact a well constituted crew would be one which consisted of one-fifth marines, one-third men "bred to the sea," and a complementary element of "sea labourers." If we take a well composed crew of 300 men, it would contain 60 marines, 100 prime seamen, and 140 "landsmen and waisters." Nor was

it necessary that the proportion of prime seamen, regular bred seamen, should be greater. There was much work to be done in a ship, in merely hauling at ropes on deck, or between decks, for which the skill of the sailorman who could hand, reef and steer, set up rigging, and, in short, "do the work of an able seaman," was not required. Even at the guns muscular strength was of more consequence than seamanship. If a man was equal to the strain of pulling and hauling, when one was allowed for each 500 pounds weight of metal, that was nearly enough. It was only when tackle was to be repaired that the skill of the sailorman, who, among the many qualities required of him, was expected to be a "ropeman," was called for.

Few at the best of times were the ships which, and fortunate were the captains who, left home at the beginning of a commission with a well balanced crew. When the captain was so happy, his good fortune not uncommonly ceased when he joined the flag. The Admiral was very likely to make ruinous drafts on his prime men, in order to improve the crews of other ships. The sailormen were the skilled artificers of the time when a ship depended on her running and standing rigging, and when spars were shattered in action and carried away in gales. Therefore they were the most valuable element in the crew. And they were also the most difficult to obtain. Their pay, their rations, the bounty, and the hope (often delusive but always operative) of making a good sum of prize money, combined to attract the marines and sea labourer elements. They were not skilled men either at sea or on shore. But this was not the case with the regular bred seamen, for the sufficient reason that wages in the merchant ships

rose in war time. And these men detested the discipline and the close restrictions of a man-of-war. It is sometimes assumed that what they resented was the use of the cat. But this is certainly a baseless assumption. The rope's end was much in use in merchant ships. Cases in which sailors volunteered into a man-of-war to escape the tyranny of a brutal skipper were not very rare. It was however noted that these recruits were apt to desert at the first chance. Merchant sailors would volunteer when the press was hot in order to earn the bounty, and a little because the volunteer was always estimated above the pressed man. Indeed the fact that a prisoner could show that he was a volunteer, could always be pleaded in mitigation of any punishment he might incur. And there were some men who took to the Navy heartily. They found the life to their taste, they could be rated petty officers, and the road was open to them to the rank of master, and was not wholly shut to the safe position of commissioned officer. Yet the bulk of the real "sailor-men" came into the Navy by the press.

In so far as impressment operated through razzias in the seaports, it does not come within our limits. But this was the least effective of all the ways in which men were pressed. The best and the greatest number were pressed out of merchant ships at sea.

There is no need to labour to prove that this system, which never left the seaman free however long he lived, nor however often he might have served before, was fiercely resented by the rougher natures. Some there were who would go to all lengths in self-defence, or in revenge. An extraordinary case occurred in 1779, when Thomas Wood, a pressed man, was tried by a

Court Martial on board the *Winchelsea* at Sheerness. The charge was that he had plotted to blow up the forecastle of the press tender *Speedwell* with gunpowder, and that, when he found he could not carry out this scheme, he next tried to obtain seven pounds of arsenic which he intended to put into the boiler where the food was cooked. Wood, when asked whether he had any defence to make, answered laconically "No." He was sentenced to 300 lashes.

Wood's case was exceptional and is ill-reported. It is not clear whether he was a desperate man prepared to go all lengths, or only a fool. But there were other ways in which the fury of the pressed men could find vent. When men were captured they were not as a rule taken directly into the crew of a man-of-war. They were collected in depôts, guardships in harbour, or in the case of those pressed at sea, into tenders. These were small vessels, schooners or cutters, commanded by a lieutenant detached on press duty. They lay in wait off Portland or at any other point where the homeward bound vessels converged on their way to a port. They stopped these vessels and took the men out. The officer was bound to lend the merchant skipper a sufficient number of hands from his own press gang to take the vessel into harbour. But it will occur to all readers that, when a number of more or less infuriated merchant sailors had been accumulated in a tender, and the press gang had been weakened by detachments, a dangerous situation would be created. The pressed men might mutiny, and overpower their captors, and such cases did occur. When the mutineers succeeded and escaped, nothing more would be heard of the incident. Though the country tolerated impressment, and

soothed its uneasy conscience by reflecting that there was no injustice in compelling the sailor to serve his country in the way of his trade, there was a good deal of sympathy felt with the individual men. If they could overpower the press gang and get off they would come to no harm so long as they abstained from murder. If force was used to suppress an outbreak in a tender and life was lost, the officer responsible would be tried by Court Martial, and then he must prove that he was justified in using firearms.

In 1755 there took place a collision between press gang and merchant seamen which shows both to what lengths the rage of the men would carry them, and what were the circumstances in which an officer was held to be justified in quelling opposition by the use of firearms. It also brings us into the company of two of the most famous chiefs of the Royal Navy. In that year Rodney, still only a post captain and untitled, was in command of the guardship *Prince George* at Portsmouth, and Sir Edward Hawke had the command of the ships at "Spithead and Portsmouth Harbour." Rodney's duty was to see to the service of the press warrant. He would, in the usual routine of the service, appoint officers of the guardship to the command of tenders, and send them into the Channel to stop the homeward bound merchant ships and press men out of them. One of the tenders was the *Princess Augusta*, commanded by Lieutenant Robert Sax of the *Prince George*. On the 1st June, at 5 o'clock in the morning, the *Princess Augusta* fell in with the *Britannia* homeward bound from Leghorn. The *Britannia*, like all the trading vessels of the time which made long voyages, and in particular those which sailed in waters so infested

with pirates as the Mediterranean, carried guns, and she carried a crew of over twenty officers and men. The lieutenant hailed the *Britannia* to "bring to," that is to say to stop and allow him to serve his warrant. The master in answer only asked him to delay the service till the vessel was out of the dangerous current called the Race of Portland. Mr Sax consented, and the two vessels stood on till they were out of the Race. The master of the *Britannia*, who was himself exempt from the press as were all commanders and first-mates of trading vessels in actual employment, and who, moreover, knew that the lieutenant would be bound to see him safe into harbour, had no motive for obstructing the service of the warrant. His men, who saw themselves about to be pressed at the end of a voyage, and who were well aware that their families might have a difficulty in recovering the wages due to them, and who also knew that in any case they themselves would be carried off for months if not for years of confinement in a man-of-war, had very powerful motives for resisting if they could. So they began by mutinying against their own captain and took the command of the ship out of his hands. They set a press of sail and tried to make off. The tender had no difficulty in heading a heavily laden merchant ship. Sax placed the *Princess Augusta* on her bow and again hailed her to bring to. The captain answered that his men would not obey, and "a voice" from the *Britannia* roared "we don't know that you are not a pirate." The answer and some words which followed were as a matter of course garnished with certain flowers of rhetoric. Them we need not repeat. Sax expostulated with the men. He shouted to them that a war with France was expected,

that men were needed for the Navy, and that as the Channel was swarming with press tenders, they had no chance of ultimate escape even if they could get away from him. The crew of the *Britannia* simply would not listen. The lieutenant ordered a boat to be manned and sent it to board the *Britannia*. Her crew beat the press men off, and Sax saw that they were training a gun on the tender, and he heard a voice calling "fire" in the merchant ship. Then he felt justified in ordering his men to fire a volley of small shot into the *Britannia*. They obeyed and three of the merchant sailors were killed. This execution cowed the survivors. The lieutenant took possession of the vessel and carried her into Portsmouth.

An incident of this nature could not but be most unwelcome alike to Rodney and to Hawke. It might well lead to an explosion of the latent, but never quite forgotten, popular hatred of the press. Lieutenant Sax had brought with him not only the ship and the fifteen survivors whom he had pressed, but the bodies of the three who had been killed. If the bodies were carried ashore for burial, a coroner's jury must have been summoned, and it would not improbably have brought a verdict of murder against Lieutenant Sax. Then there would be an intervention of the "Civil Magistrate" and perhaps some trouble for ministers. To avoid all risk as much as might be, Hawke gave orders that the bodies should be taken outside St Helens and thrown into the sea. But though means were taken to keep the case out of the hands of the lawyers, Lieutenant Sax was brought to Court Martial on the 14th November. He told his story and was confirmed by the master of the *Britannia*, who, after

some demur, was allowed to appear as witness against his crew.

All merchant skippers were not so well disposed to forward the press as the *Britannia's*. They occasionally gave trouble, and so did other authorities. A naval officer had to be sure that the men he seized were not protected against the press. Cases, which of course did not come before a Court Martial, did occur in which officers were cast in damages for exceeding their legal powers. When for instance they pressed men in the employment of municipal corporations, or out of whalers. The whaling industry, which entailed not only long voyages in remote seas but the employment of large crews, was protected for its encouragement. But apart from the risk that he would lay himself open to an action for damages, a captain might be made to suffer some annoyance by a quarrelsome merchant skipper. In 1761 Captain Fielding of the *Unicorn* was subjected to a Court Martial in the Downs, brought on him by Mr Potts, master of the merchant ship *Julius Caesar*. Captain Fielding had pressed three men of the crew of the *Julius Caesar*. He had been first abused on his own quarter-deck by her infuriated skipper, told that he was not fit to command a man-of-war, and lampooned by Potts in a letter to the "Daily Advertiser." The Admiralty ordered a Court Martial to be held on Captain Fielding, and he was called upon to justify himself. Captain Fielding's experience does more than let us see what troubles might befall a captain in the Navy while engaged in enforcing press warrants. It shows what the course of trade might be for a merchant ship in war time, and it illuminates the clumsy and stupid side of the whole system of impressment.

The *Julius Caesar* was a homeward bound West Indiaman, and as she was considered short handed with a crew of twenty-three men, she was no doubt a vessel of some size—of four or even five hundred tons. A vessel of that tonnage was counted large for the time. Michael Scott, the author of *Tom Cringle's Log*, writing in the nineteenth century, speaks of a five hundred ton ship as "stately." She had been compelled to come away in a hurry because the convoys were ordered out by the naval authorities. So her master, Mr Potts, had not had time to look for more men. The crew with which she had left England had, we may be sure, been diminished by desertion, which was very common in the West Indies, and had perhaps already been drawn on by the press in those waters. We are not told how she came to find herself sailing apart from a convoy when she was to the westward of Portland between four and five o'clock in the afternoon of the 25th June, 1761. She was however in company with and under the protection of the *Fowey*, Captain Tynan.

Captain Fielding of the *Unicorn* met them, and hailed the *Julius Caesar* to bring to. He sent his first lieutenant, Mr John Richardson, on board to press some of her men. A press warrant could be served only by a commissioned officer. When Lieutenant Richardson boarded the *Julius Caesar*, he asked her skipper to call the crew aft. Mr Potts did not at the moment make any protest. We gather from the whole story that Mr Potts did not object so much, if at all, to the impressment of some of his crew as to the choice made by Mr Richardson. The lieutenant looked at the twenty-three members of the *Julius Caesar's* crew,

and came to the conclusion that she was not badly manned. He felt justified in picking three of the best of them, Samuel Whitehead, the second mate, Joseph Thornhill, the gunner, and Stephen Benfield, a seaman. The loss of five of the worst of his men would have been more tolerable to Captain Potts than the taking away of these three. The gunner was peculiarly valuable to the *Julius Caesar*, for the armament was in his charge, and his skill was not to be replaced. The second mate was no doubt also a regular bred seaman. Benfield, when called as a witness at the Court Martial held on Captain Fielding, described himself as of fifty-six years of age, as having served in the Navy already, as having been "bargeman" to one captain, and as having done the duty of a midshipman. To be deprived of these three was a serious loss to Captain Potts, for even putting aside the dangers of the navigation of the Channel, two French privateers were known to be cruising off the Start.

When Lieutenant Richardson returned to the *Unicorn* with the three men he had taken, the master accompanied him. He saw Captain Fielding in his cabin. What passed between the navy and the merchant captains there is not clearly stated, but their voices were heard in anger. The two came out on to the quarter-deck, and there the skipper scolded Captain Fielding with fury, telling him, among other things, that he was not fit to command a man-of-war, that he would behave himself differently if he were "in place" to be properly answered, adding that his own name was Potts, and that he was to be heard of at the Jamaica Coffee-house. He was in fact offering Captain Fielding the satisfaction of a gentleman. Captain Fielding

according to the testimony of his officers, was cool. It is manifest that he was not conciliatory. He replied that if he met Mr Potts on shore he would despise him as much as any of his foremast hands. He ended by asserting that he could flog him. The skipper replied that he dared not.

After this exchange of "high words," the master of the *Julius Caesar* went back to his ship in company with the second mate who came to bring his own clothes and those of the other pressed men. The "high words" were continued with the help of speaking trumpets. Captain Fielding roared out to his own officer to leave the fellow alone and let him be d——d. Mr Potts bellowed the navy captain's oath back to him. He also swore that he would not give pay notes for the men taken. Captain Fielding replied that he would be a rascal if he did not, and would be sued. The threat was discreditable to the merchant skipper, and Captain Fielding's answer was right as to the facts.

Meanwhile the *Fowey* had come within hailing distance of the *Unicorn*. The two captains were of course aware that they were under an obligation to see the *Julius Caesar* safe to port. Captain Fielding's irritation did not blind him to that patent fact. He would have sent safe men—that is to say men who could be trusted not to seize the opportunity to desert—to replace the three he had taken till the merchant ship was at anchor. Captain Tynan, who appears from the evidence he gave and from his actions to have been a man who had a better control of his temper than his colleague, observed that as his ship was foul, and must return to port to be scraped, he had better look after the *Julius Caesar*, while the *Unicorn*, which was clean,

could go in search of the privateers. And so the matter was settled for the time being. Captain Tynan sent four men, two able-bodied seamen, one ordinary and one landsman, to replace the three "prime men" pressed by Captain Fielding. One ordinary seaman and one landsman were, in a rough way, the equivalent for one "sailorman." If Captain Tynan had had the management of the whole episode it may be that no Court Martial would have been called to sit on board the *Newark* in the Downs. As it was Mr Potts went off in a glow of rage and employed his first leisure in writing the letter to the "Daily Advertiser," upon which the Admiralty ordered the Court Martial to be held on Captain Fielding.

The Court was presided over by that Sir Percy Brett who sailed with Anson on his famous voyage, and who by his action with the *Elizabeth* deprived Prince Charles Edward of the stores he was bringing with him to Scotland in 1745. It naturally found that Captain Fielding had done no wrong.

This story lacks the bloodshed and fury of the encounter between the press men and the crew of the *Britannia*. But that was a most exceptional tale and stands nearly alone. We learn from the exchange of abuse and threats between Fielding and Potts, and the other details of the incident of the 25th June, what the normal working of the press, when enforced on ships at sea, was, far better than we can from a very rare or even unique example of actual battle. Neither of the two captains wins entire sympathy. Both were contentious and rather wrong-headed. With the help of a moderate amount of patience and tact Captain Fielding could probably have pacified the aggrieved

skipper. It is plain that he retaliated for the man's rudeness by an underbred display of insolence, and his threat, besides being brutal, was absurd. He would certainly have laid himself open to an action, and to severe damages, if he had put it into effect. On the other hand it was his duty to do the best he could to obtain a good crew for the *Unicorn*, and the regular bred seamen he pressed belonged to just the class which was of most value to the Navy, and was hardest to secure in any other way.

We see too that the Admiralty was very nervous when it heard of a case of alleged abuse of the press. The shipowners and merchants formed a most important body, and it was rash to offend them. We see too that against the gain made by the press, there was always to be set off the loss of the services of the men by whom it was enforced. In possible circumstances Captain Tynan might have had cause to regret the four men he had to lend to compensate for the three taken by the *Unicorn*. When the men employed in tenders and in press gangs on shore are allowed for, it becomes very doubtful whether the price paid for the men obtained was not excessive. These men were trustworthy. They would not desert, and they were employed in seizing others who did run away on the first chance. Two thousand men employed in press gangs ashore represented more than the complement of three 74's or six frigates.

Impressment, by the very nature of the thing, had a tendency to instigate corruption. It began by appealing to a not very noble instinct, for the members of the gangs were rewarded by head money for the captures they made. When they were offered a bribe equal to their head money, or better still a larger sum,

they were apt to succumb to temptation. Such bargains were made, but they came little, and only in earlier times, before a Court Martial. It was dangerous, and, in the case of the press tenders, impossible to make them at sea. There were too many witnesses present, and those who were interested in giving the bribe had commonly no money in hand. Mr Paine, lieutenant of the *St Michael*, was probably not the only sinner in this way, and differed from others who contrived to escape detection mainly because he came to grief through a combination of accident and his own greed. The story was told to a Court Martial held on board the *Elizabeth* in the Downs, on the 25th March, 1696. Among the merchant vessels collected there to wait for convoy and a fair wind was the *Baltimore* pink. Paine sent a master's mate to press one-fourth of her men. It looks as if the lieutenant had expected an offer, for when the men had been secured and none was made, he sent again and pressed a sailor whom the master of the pink, Nicholas Seaborne, could not spare. Seaborne applied for the release of the man and, making a partially accurate guess at the character of the officer, he offered him a guinea, the amount of the head money. Paine accepted the offer. It happened that Seaborne had no money in pocket, but a fellow skipper and friend of his, one Mr Gandy, promised to pay for him, and did in fact send the coin. The skipper of the *Baltimore* thought that all was well, and it was a shock to him when Paine sent for the man again next day. He concluded that his friend Gandy had failed him, and being now again in funds gave the guinea. But for an unfortunate accident Paine would have pouched the double bribe. He had seemingly calculated that

Seaborne and Gandy would not meet for a time, or that they would not care to confess their act of bribery. They were more business-like, or less squeamish than he had expected. Gandy asked for repayment, and Seaborne learnt the truth, and he at once lodged a complaint with the flag, Lord Aylmer. Paine was brought to trial, sentenced to forfeit all pay due to him for the benefit of the Chest at Chatham, and to be dismissed the service.

His position as commissioned officer stood him in good stead. William Baker, captain's clerk in the *Dunkirk* in 1701, who took three or four pounds for giving an unauthorized release to Richard Smith, was sentenced to receive 15 lashes alongside the flagship, the ship of the Vice-admiral, and his own ship, and to be turned ashore.

Impressment provides a much needed excuse for going on to tell the strange story of H.M. gun-brig *Assault* and the townsmen of Mevagissey. It stands so entirely by itself that if a case of impressment did not come to be mentioned in it, there would be no small difficulty in knowing under what head it ought to be placed. H.M. gun-brigs did not usually open fire on his subjects, nor did *they* collect with pikes and muskets, making loud threats of their intention to take the vessel and slaughter officers and crew.

We start at the Scilly Isles in September 1798, not much more than a month after the battle of the Nile, when a schooner, a recaptured prize—that is to say a British vessel taken by a French privateer and retaken by H.M.S. *Amelia*—came in. She was in distress, for she had lost her mainmast, and had suffered other damage. The prize master applied for help to

Lieutenant Henry Hicks, in command of the gun-brig *Assault*, stationed at the islands for the protection of trade. He was of course nowise loth to give aid, for he would thereby become entitled to a share in the salvage. But Lieutenant Hicks was not free to devote himself wholly and at once to the relief of the *Amelia's* prize. Other vessels had sought refuge in the Scilly Isles, West India traders which had lost convoy. They feared to go on alone, for the coast was haunted by small French privateers. Even when our fleets were most triumphant these skimmers of the sea, quite small vessels, full of men, infested the entry to the Channel, and were a terror to solitary merchant ships. It was the duty of the lieutenant, and one he dared not neglect even if he wished, to see them safe round the Lizard. Therefore he did not sail from the islands with the crippled schooner in tow, till he had collected the straggling traders. He saw them round the Lizard to where they could find other protectors. He would have carried the schooner into Falmouth or Plymouth, but the wind suddenly shifted, and began to blow fresh. The merchant ships could now be left alone, and the *Assault*, hampered by the schooner she had in tow, bore up for Mevagissey.

The townsmen of Mevagissey saw the hand of providence in this appearance of a man-of-war with a prize. Some of them thought that their town should have a share in the good things going. Mr A. W. Rawle, described as a clerk in the employment of Messrs Fox and Co. of Falmouth, applied to Lieutenant Hicks for a job as prize agent. The lieutenant replied that the schooner was in charge of a prize master, put in by the captain of the *Amelia*, and that he

was responsible. Mr Rawle now applied to the prize master, and was rebuffed. He then sent a man aboard with a written order to represent the owners. The prize master bundled Mr Rawle's agent ashore. And now events occurred which are but dimly indicated in the Court Martial. Meetings between Mr Rawle and friends of the one part, and Lieutenant Hicks with the prize master of the other, took place at the Red Lion Inn. Disputes arose and Mr Rawle forgot himself so far as to strike Lieutenant Hicks. The case too was complicated by the introduction of the mate of the *Adventure*. This man had been pressed by the *Amelia*, and was one of the prize crew of the schooner. He was apparently a local man and had friends who were trying to obtain his release. The lieutenant told them he could do nothing, and that they must apply to the Admiralty. Attempts were now made to forward the desertion of the "mate of the *Adventure*," and another member of the prize crew. For his better security the prize master asked the lieutenant to transfer the mate to the *Assault*, and enter him on the brig's books.

The *Assault* was lying about 20 feet from the quay, and communicated with it by a plank gangway. Where the schooner was does not well appear, but she was no doubt close by. There was another armed vessel near at hand, the privateer *Lord Hawke*, Captain Tampington. She was refitting, and her guns were landed on the quay, a detail which had its share in what was to follow. Mr Rawle at this point goes out of the saga, and is replaced by Mr Carkeet, another clerk. Mr Carkeet appears as the friend of "the mate of the *Adventure*." He hung about on the quay and shouted to the man,

who shouted back. Hicks spent a good deal of his time on shore, at the Red Lion in all probability. He had given strict orders that nobody was to be allowed on board, or to land. What then was his natural indignation when he returned to the brig one afternoon, and found Mr Carkeet installed in his cabin. His anger flamed up at this intrusion which, he said, was due to the impudence of Mr Carkeet, who took advantage of the inexperience of the very young midshipman who was on watch at the time, to represent himself as a friend of the captain's clerk. Hicks ordered Mr Carkeet off at once. The man went, and so soon as he felt safe on the quay turned round and gravely rebuked the lieutenant for lack of manners, telling him that "his conduct did not correspond to his cloth, which entitled him to the appellation of a gentleman." Hicks, who had been 19 years in the rank of lieutenant, was certainly old enough to know better than to do what he now did. But his patience was worn out, and perhaps he had gone too much to the Red Lion. He sent three men to seize Mr Carkeet and drag him on board. When the clerk tumbled on to the quarter-deck, the lieutenant asked him if he did not know better than to stand on that part of a man-of-war, and not take his hat off. Mr Carkeet replied saucily that there was nobody in the crew who was man enough to take his hat off. The Lieutenant showed him that the *Assaults* were men enough to put him in irons.

The sight of this most unlawful arrest, and of Mr Carkeet in the bilboes, infuriated the Cornish men. A crowd, of which the privateer's crew, always ready for a turn up with men-of-wars' men, were conspicuous, collected on the quay. Pikes and muskets appeared.

The mob gathered round the *Lord Hawke's* guns. Loud cries of menace and abuse resounded. Well-meaning persons hurried down to restore peace. Among them came Mr Melhuish, an aged and respected townsman, who asked, so he affirmed, "What the — is all the row about" and said no more. But it appears that he flourished his hand. The lieutenant had his eye upon him, and promptly roared out "What is that old rascal saying of? Bring him here." He was brought. A worse thing all but befell him, for Lieutenant Hicks, now infuriated to quite outrageous heights, ordered his men to tie Mr Melhuish up at the gangway, and flog him. His order was enough and already Mr Melhuish's coat, waistcoat and tie had been stripped off and his shirt was being torn from his back, when he broke from the hands of the *Assault's* men, threw himself on his knees on the quarter-deck, and holding up his hands protested lamentably that he was sorry if he had offended, and begged for mercy. The lieutenant was not implacable, nor yet quite beyond his senses. He told Melhuish to put his clothes on and be off. The old man did, and never stopped till he reached his own house. Either before or about the time of the release of Mr Melhuish, and at the request of a gentleman of the town, Hicks also released Mr Carkeet. Concession always encourages sedition, as we are often told. The mob continued furious and it appears that the lieutenant did seriously believe that the guns of the privateer would be turned on the *Assault*. He ordered two of his own guns to be fired with shot. He says he ordered them to be fired at the quay only as a warning. If so the gunnery of the *Assault* was greatly to seek. One of the gun's crews

contrived to miss the quay at a distance of 20 feet, and to send a shot into the wall of Mr Mills' house. This decisive measure, aided by the intervention of a magistrate who read the Riot Act, restored order. It is a not unpleasant detail that at some moment in this hurlyburly the much discussed "mate of the *Adventure*" made his escape.

Take it for all in all the incident was remarkable in 1798, and would hardly have been other than unusual two centuries earlier. Yet nothing very particular happened. The Admiralty did indeed remove Lieutenant Hicks from the command of the *Assault*. He applied for a Court Martial. The Court sat from the 14th to the 17th January on board the *Cambridge*, at the Hamoaze. It came to the conclusion that Lieutenant Hicks had behaved unwarrantably to Carkeet and Melhuish, and must be dismissed his ship (from which he had already been removed by the Admiralty) but that the menacing attitude of the crowd excused him for firing the two shots. Lieutenant Hicks was most concerned in his defence to show that he had not seized Mr Carkeet till he was provoked by such abuse in the presence of his crew as only "a coward" could be expected to endure. He avoided the episode of Mr Melhuish, and he did not say whether he had chastised Mr Rawle for the blow which he confessed that pushing agent of Messrs Fox and Co. of Falmouth had given him. The story goes far to justify the harsh view which Lieutenant Terence O'Brien took of cutter midshipmen and other officers serving in small craft about the coast.

From some of the questions put by the Court to the witnesses, there appears to have been a suspicion

that the whole disturbance had been deliberately planned for the express purpose of covering the escape of the pressed men. It is clear that this was a strong motive with the crowd, and we cannot doubt that Mr Carkeet intruded into the *Assault* for that purpose. But it is equally clear that the riot would never have taken place if Lieutenant Hicks had kept his temper. On the other hand it looks very probable that Carkeet and Melhuish would have sued him, if they had not felt it wise to avoid drawing too much attention to their plot to tempt men to leave the King's service.

Since he was engaged on press work, but not only for that reason, I will here take the case of Lieutenant Pollard of the *Conqueror*, who in 1777 was sent into the Channel in command of the *Fanny* press tender. His orders were to return in 14 days. He not only did not return, but weeks passed without news of him. It was at last discovered that he was at Swansea. When orders were sent him to rejoin his ship he made no move and no answer. A Lieutenant Osborn was sent to take command of the *Fanny* and arrest Pollard. Osborn found him in a state of collapse, bodily and mental, and when he came before a Court Martial on board the *Ocean* at the Hamoaze, on the 19th December, he was seen to be in the most literal sense imbecile. He could not even form an intelligible sentence when he was asked what questions he had to ask a witness. We may guess, though nothing to justify the supposition appears in the evidence, that he had reduced himself to this state by drink. But even so we cannot suppose that Lieutenant Pollard was a sane and sober man when he was detached from the *Conqueror* on press work. His case shows that officers who did not stand high in the

estimation of their superiors were chosen for this unpleasant and most unpopular form of duty. His otherwise uninteresting story is worth noting for that reason and indeed for that reason almost alone*.

One part of the system of impressment is much forgotten in our time. And yet it was of old standing, and did not cease till the end of the Napoleonic Wars, that is to say, while impressment itself lasted as a practical reality. This was the use of compulsion to enforce the service of foreign prisoners of war. It was done with the approval of the Admiralty in all our wars and on a large scale. No further evidence for it is required than the well known letter in which Collingwood describes the "motley" character of the crew of his own flagship. It has naturally left its traces in the records of Courts Martial. They are on the whole creditable to the good feeling of our officers. The way in which the presence of foreigners in our crews would come before a Court Martial would be, as a rule, through cases of desertion. The inevitable

* Lieutenant Pollard's case may serve another purpose which is best disposed of in a note. The reports of Courts Martial are rich in instances of insanity and imbecility in all ranks—below the Admirals. The sentences passed are not less rich in examples of the shocking callousness of our ancestors towards people suffering from this disease. We can indeed find a case of an officer who "gave such visible proofs of insanity" that the Court "recommended him to the Admiralty as an object of great pity." On the other hand we meet with a shameful number of cases in which seamen and marines who were demented were punished with exceptional severity on that ground only. The worst I have found is that of a poor "natural" who had long been a butt for the horseplay of a ship's company, who endeavoured to desert and was sentenced to a monstrous punishment which, so the Court decided, was to be inflicted in "the most shameful manner" because he was "devoid of reason." I do not quote this as peculiarly dishonourable to the Navy, but only as a proof that it was not above the level of a gross and callous age.

sentence would be passed as a matter of course, but there was a disinclination to carry it out. And this was true even when the impressment was indirect, that is to say, when foreigners volunteered only to escape the miseries of the state of prisoners of war. Where the compulsion was undisguised the Court would, when possible, dismiss the case. In 1796 a Court Martial was held in Table Bay on three Dutchmen accused of desertion. They had been pressed from the Dutch ship *Tromp*. The Court acquitted them because their services had been enforced, they had not accepted a bounty, and had not taken the oath of allegiance. The names given to these men are not undeserving of notice. They are said to have been John Almond, Henry Holt, and Jacob Williams. Now the last may be the anglicised form of a common Dutch name. The first may be the translation of Jan Amandel. Henry Holt was clearly enough given arbitrarily. But all three are "pursers' names." They were given by the official who entered the men on the ship's books, and, as he was English, he took forms which gave him the least trouble. It follows that the books were of no value whatever as evidence of the nationality of the members of the crew. But indeed no secret was made of the presence of foreigners in our fleets. Marryat gave the composition of the crews of three ships during the Trafalgar year in his book on the press. There were foreigners among the seamen, or marines, of all three.

It has been already pointed out that, although the Articles of War of Charles II contained no express condemnation of the practice of keeping false musters, officers could be tried for it under the 33rd article.

They could of course always be made answerable for breach of the instructions of the Admiralty. The difference lay in the greater laxity of the times before the passing of the act of George II, and in this that the penalty was left to the discretion of the Court—for the custom of the sea meant nothing else—whereas in later days the only punishment the Court could lawfully inflict was dismissal. The case of Captain Andrew Leake, brother of the better-known Admiral Sir John Leake, shows that an officer could be called to account for “false musters,” and also that the charge was capable of being made useful as a means of bringing him to answer for misconduct, which it might have been otherwise difficult to define.

In 1700 he was charged with misbehaviour when on duty with the Newfoundland convoy. The regular round of the convoy was to leave England with the fishing fleet bound for the Banks, to protect it during the fishing season, and then to escort it to its markets, which were not in England, but in the Spanish Mediterranean and the Italian ports. Leake thought he saw an opportunity to combine his lawful emoluments with a speculation in stockfish. He took a fishing smack of his own with him to the Banks. While he was on them he manned her from his ship the *Hampshire* and gathered a cargo. The men whom he told off for this purely private purpose were rationed from the *Hampshire* and continued of course to be borne on her books for pay. Captain Leake in fact charged the King with the pay and food of the men who were engaged in making money for him. There is a touch of humour in the fact that the name of the smack was the *Falstaff* of “Lastolf,” *i.e.* Lowestoft.

Sir John would have appreciated the ingenuity of Captain Andrew. When the fishery season was over, the fleet sailed for the Mediterranean. Leake traded successfully in Spanish and Italian ports, and finally disposed of his smack at Leghorn to "a Jew." The sailors would describe any trader as "a Jew."

Now it was obvious that Leake's speculation pointed the way to gross abuses. If the naval officers of the Newfoundland convoy were themselves to appear as competitors in the business, the regular traders would soon be at a disadvantage. The naval men might be trusted to take care that their cargoes should get the first and the best of the market. Therefore the traders naturally raised an outcry. But it was somewhat difficult to decide as to which of the articles of war Captain Leake had offended against. They had not contemplated such a case. False musters provided a convenient charge. Leake had borne men on his own books who, by his own act, were not engaged in serving the Crown. The Court Martial sentenced him to pay a fine of £50. He could probably well afford to pay the money. If Captain Leake was smirched by the indelicacy in self-seeking common in his time, if there was about him something of Captain Capperbar, he was none the less a gallant officer, and lost his life in service on a great occasion. He was mortally wounded at the taking of Gibraltar.

Captain Leake's case stands by itself—an example rather of a spirit than of a practice. But we have a singularly good instance of what was meant by keeping false musters in the Court Martial on Captain Isaac Coffin on board H.M.S. *Dido* at Halifax, on the 21st and 23rd May, 1788. There was a certain humour in

the fact that he, of all men in the Navy, should have been brought to book for this offence. The biter was bit. Six years before, when Coffin was captain of the *Shrewsbury* in the West Indies, he had created some scandal by refusing to receive three officers to whom Rodney had given lieutenants' commissions. He justified his refusal by showing that the appointments were irregular*. That the gentleman who had been such a stickler for the letter of the law in 1782 should be tried for keeping false musters in 1788, was a very good instance of the action of our old friend, the irony of fate. So was the fact that, if Rodney was wrong in 1782, Coffin was equally in the wrong, and in essentially the same way, in 1788.

In the autumn of 1787 Coffin's ship, the *Thisbe*, was at Quebec. With, as he warmly affirmed, no base desire of personal profit, but out of pure kindness and politeness, he lent the services of his cook, John Francis, to Colonel Dundas and Mr Pemberton, who were then "moving about the country." He also allowed no less than four sons of the Governor of Quebec, Lord Dorchester (the General Guy Carleton of the American War), to be entered on the books of the *Thisbe*. The true meaning of these entries is so clearly, and withal so pleasantly, stated by Lord Dorchester himself, that I shall quote his own words. On the 27th April, 1788, when Coffin was about to be Court Martialled, Lord Dorchester wrote to request that his boys' names might be taken off the *Thisbe's* books. If he had had any suspicion that there was anything irregular in their entries he would never have made the applications

* The story will be found in the Conclusion.

he did to have them included formally in the *Thisbe's* crew, but he went on :—

“ I have always understood that it was the constant practice of the Captains of the Navy to enroll the names of young gentlemen intended for that service, in order to put them forward in their profession, at the same time that they were on shore pursuing the mode of education adapted to the line of life into which they were going to engage in. Thomas the elder of the two having expressed a desire to become a sailor he was some years ago borne on the books of a Guardship commanded by Captain Kingsmill, and continued on the books of the same or another Guardship till the time of his embarking on board the *Thisbe*, nor did I ever hear that any objections were made thereto. Christopher hearing his brother declare his intention of going into the Navy expressed the desire of doing the same. [I] was accordingly induced to request that he also might be entered that in case he persevered in that intention he might have the same advantage, nor can I allow myself to think in either case I made an improper request.”

Lord Dorchester does not tell the whole facts. There were four sons of his whose names were on the *Thisbe's* books—Guy, George, Christopher and Thomas. They were rated for pay and rations as able seamen or captain's servants, and none of them were actually in the ship. But the details were not needed. On the essentials of the case he was absolutely candid. These young gentlemen, who had the good fortune to be sons of the Governor of Quebec, were put on the books of guardships at a very early age “ to bring them forward”—that is to say, to give them a seniority which represented neither training nor service. The working of the practice was this. A boy of eleven or twelve might be entered on a ship's books for pay and rations while he was at home or at school. The mere fact that his name was on the list gave him seniority. If he and his family finally decided that he was to go to sea, he would join a ship when he had already three or four years nominal service to his credit. When he

had completed five years, and at the age of seventeen or less, he was competent to receive an order to pass, and would then go before a board of captains, who would certify that he had proved five years service (which he did by producing copies of the false musters), and that he could do the work of an able seaman. If he had interest the list of lieutenants would be enriched by the addition of a young gentleman who had been at sea for a very short time in any case, and perhaps hardly at all. And when once a lieutenant he might be made a Post-Captain immediately.

Lord Dorchester was absolutely right in saying that it was a common practice. He might safely have prophesied that it would go on being common. But none the less it was the offence of keeping false musters. When it is remembered that among Rodney's nominees, whom he refused to receive in 1782, one, Oldfield, had been twelve years at sea and five of them in the Navy, it would seem that Coffin was the very last man who could consistently lend himself to what was an abuse*.

His defence was somewhat pitiable. He dared not boldly assert, as he might truthfully have done, that all captains, including, we may be sure, some if not all of the officers who were sitting as his judges, habitually committed this notorious illegality. He could only plead that he had always avowed a hatred of "false musters"; that neither he nor any of his officers had made personal profit by his compliances, which we can accept as true; and that the accusation

* The undeniable fact that some famous officers, Dundonald among them, profited by this fraud (to call it by its right name) does not alter the nature of the thing. The men were better than the system—sometimes. But for one Dundonald there were fifty or more mere fruits of favouritism who were foisted into the list of lieutenants and captains.

was made by his master, Wynter, out of pure malignity, and not from any zeal for the King's service. We do not know on what motives Mr Wynter acted, and it is plain that his intention was to damage Coffin. What we do know is that the master of the *Thisbe* played the game which had been played by the captain of the *Shrewsbury*, and that they stand or fall together.

The trial had a curious preliminary and a still more curious sequel. Coffin wished to call the master, who was the prosecutor, as a witness on his own behalf. It was doubted whether he could, and reference was made to the Admiralty. My Lords saw no objection, and Wynter was duly called upon to cease being prosecutor, and turn himself into witness for the defence. Coffin needed him to prove his own avowed dislike of false musters, that he had never tried to compel any of his officers to sign the fraudulent books, and had not allowed them to make a profit by the false musters.

The sequel came because of the irregular judgment of the Court. The captains before whom Coffin appeared could not but have a fellow feeling for him. They knew that he had only done what the whole service was doing. To condemn Coffin was to condemn themselves. Yet the offence was clear. It was not even denied. Coffin could only plead that he was the victim of the master's spite, that he had not acted corruptly, and that the King's service had not really suffered. They saw a divided duty. On one hand was the obligation to "do justice," and on the other there was the obligation to obey the law. The 31st article of the Articles of War said that false musters were not to be kept, and that the penalty for keeping

them was dismissal from the service. They could not venture to acquit the prisoner, and they felt that it would be a real injustice to cashier him. It was a case of casuistry. The best course would have been the simple one. Since they could not acquit, without flying in the face of law and evidence, they would have done better to condemn, to pass the only lawful sentence, and then to add a strong recommendation to the Admiralty, and leave my Lords to avail themselves of the King's undeniable right to restore Coffin to his rank in the service. They did decide to attempt a compromise which put them in the wrong, and could do Coffin no real good.

They found, as in fact they were bound to find, that the charge was proved but "that it appears to this Court, that the prisoner had no intention whatsoever of defrauding His Majesty, nor was there any loss sustained by His Majesty from the said false musters, which they are clearly of opinion takes off a great part of the crime of a false muster, and therefore the Court had to adjudge him, the said Captain Isaac Coffin, to be dismissed from the command of H.M. Ship *Thisbe*, and he is hereby dismissed from the command of the said ship accordingly."

Coffin came home and his sentence was transmitted to the Admiralty. Howe, who was then First Lord, saw at once that the sentence was irregular, and proceeded to surpass the Court in irregularity. He amended the sentence to dismissal from the service. Coffin was equal to the situation. He was quite as well able to deal with Howe as with Rodney. He at once protested that the First Lord had no right to turn himself into a Court Martial, and pass sentences

after the manner of the Cadi under the Palm Tree. The Judges to whom the question was referred supported Coffin. They declared that the sentence of the Court was irregular and null, but also that it could not be amended at the free will and mere motion of the First Lord. Coffin remained in the service.

The word plunder seems to explain itself, and to have only one meaning for all mankind. None the less it had a peculiar meaning for seamen. It had even two. There was legitimate plunder, which was for an age, and illegitimate, which was for all time. The distinction can be shown at once by help of a reference to the rules made in 1672 to regulate the distribution of gains made at the expense of the King's enemies. It was then decided that all goods and merchandize found on board any prize upon or above the gun-deck (except jewels, and the precious metals) were to be secured and sold for the men. The ship herself and her cargo were "prize." They must be brought before an Admiralty Court and duly condemned. After condemnation would come the distribution of shares. To break bulk—that is to break into the hold and pillage its contents—was an offence against the rights of the Admiralty and the King, and was "plundering." What lay upon or above the quarter-deck would be seized upon at once and was lawful plunder. The distinction was well appreciated by the seamen, and in some cases express arrangements were made for the application of it during operations ashore, as, for instance, when Anson made his attack on Paita in Peru. The abuses to which this invitation to disorder would inevitably lead are obvious*. With the growth of a

* Cf. the case of the *Trident*, Chap. I, page 35 *et seq.*

better order in the eighteenth century, this kind of plunder was forbidden, but the memory of it remained. In 1757 a "seditious" demand was made by the sailors of the *Tigre* in the East Indies, for the restoration of their much regretted privilege.

The attractions of a practice which brought immediate gain could not be abolished by mere official order. When "plunder" in the old technical sense was forbidden, it survived in the universal human sense, and so long as war lasts it will we may be sure never be quite unknown. Punishment of the most ferocious character failed to eradicate it from the British Navy. If the example of a punishment of positively revolting severity could have acted as a deterrent, plunder would have ceased to be heard of after 1761. Mr John Hervey, midshipman of H.M.S. *Defiance*, was tried on the 16th March of that year by Court Martial. He was presumably one of those men from before the mast who were rated midshipmen, but were only in an official sense "gentlemen of the quarter-deck." I would be going far beyond the evidence if I were to say that the quality of "gentleman" in the common sense would have preserved him from committing the offence. That "gentleman" includes "perfectly virtuous" is a rash, and very modern, assumption. But if Hervey had been born in the position of a gentleman, he would most assuredly not have received the sentence passed on him.

The Court was convinced that, while he formed part of the prize crew placed in the polacre* *Diligence*, he

* Polacre, a ship of Mediterranean origin in which "the masts are commonly formed of one spar from truck to keel [*and not as in an ordinary ship, subdivided into lower, top and top gallant, which are*

pilfered "two trunk cases of iron work, a case of pictures, a case and a cask of 'Delph' ware, and a cask of wine." The sentence pronounced by the Court was that he was to be reduced from the rank of midshipman; to receive 72 lashes alongside H.M. Ships at Kingston and Port Royal with a halter round his neck and to sweep decks and wash down the head (*i.e.* the latrine of the ship) for three months after his punishment. By making away with these goods Hervey had, as far as in him lay, done his best to reduce the amount of prize money which would come to others interested in the capture. But we cannot believe that the prospect of a slight injury to their pockets can have been enough to induce a body of Englishmen, who would certainly have called themselves Christians, who were sure they were civilized, and who were bound by their position to be gentlemen, to pass a sentence worthy of a King of Dahomey. We can account for their hysterical ferocity only by their belief that exaggeration of punishment was a deterrent, and by that influence of alcohol and the climate which explains so much in the history of the lawless West Indies. Yet they had only to consult their own experience to learn that extremity of punishment defeats its proposed end. The fact that death was the only punishment which could be awarded for a certain offence had its inevitable result. Courts Martial refused to condemn for the full offence in face of overwhelming evidence.

made of several pieces of wood fitted together], so that they have neither tops nor cross trees, neither have they any foot ropes to their upper yards, because the men stand upon the lower topsail yards to loose and furl the top gallant sails, and upon the lower yards to loose, reef, and furl the topsails, all the yards being lowered sufficiently for that purpose." Ad. Smyth's *Sailors' Word Book*.

This sentence stands alone in its monstrosity. A few years before, in 1755, one Lieutenant Rawlinson was found guilty of having pilfered "a parcel of worked ruffles, silver cups, spoons and forks" from a French prize. He began by making the silly criminal's silly defence, "that a man had given them to him," but soon confessed, saying that "the devil must have been in him." He threw himself on the mercy of the Court, pleading that he had served in the Navy for thirty years, and for ten of them as an officer. He was therefore one of the men who came from before the mast. In spite of his plea he was very properly dismissed the service. In later times dismissal, and imprisonment, were the punishments given to far grosser offences than Hervey's. Nothing worse happened, or ought to have happened, to Mr Jenkins, master of the sloop "*Suffisante*," who in 1798 was put in charge of a captured smuggling lugger. He took her into Cawsand Bay and "ran" part of the cargo on his own account*.

The case of Lieutenant Thomas Jones of H.M.S. *Sensible* will serve very well to show the whole working of this ugly business of plundering of prizes. With him we can make an end of an ignominious subject. The *Sensible* was one of the fleet serving on the coasts of Spain and Portugal in 1795. She had detained a Danish vessel, the *Graaf Bernstorff*, which was suspected to be engaged in carrying enemy's goods. The *Graaf Bernstorff* had been taken into the Tagus, and was for her better security to be sent home with the trading ships forming the "Tagus Convoy." Captain Hay of

* That smuggling lugger in 1798 helps to explain how it was that French laces, wines and brandies found their way into England, and English muslins were always to be bought in France, all through our wars.

the *Sensible*, a frigate, had not many officers to dispose of, and he had probably little or no choice when he appointed Lieutenant Jones to be her prize master. Yet Jones had served with a good reputation in other ships as the certificates he obtained from former captains of his must be held to prove. Captain Hay can hardly be blamed for not foreseeing that he would display both shocking callousness and stupid dishonesty. He may also have calculated that he would be safe under the eye of such a disciplinarian as Orde.

The voyage of the *Graaf Bernstorff* began ill. Sir John Orde, who was going in command of the convoy, hurried it out. There was some difficulty in fulfilling the necessary legal formalities in time. They were arranged just when she left, and by a great effort the prize was sent on her voyage. At the last moment Lieutenant Jones came to the *Sensible* to represent that his prize crew was not strong enough to get up anchor. Captain Hay was ashore, but the first lieutenant, Stupart (one guesses the name ought to be Stobart, but it is so written), knowing how much they were all interested in the safety of the prize, sent a strong detachment of men, forty-eight, with a midshipman, to get the vessel under way. He had, it would seem, some doubt of the wisdom of what he was doing, and some distrust of Jones, for he begged him "for Heaven's sake" not to keep the men till the *Graaf Bernstorff* was over the bar. The wind was from the North East and it would be hard for the men to get back in an open boat. He was himself the only commissioned officer in the frigate at the moment and could not leave her. It was not in his power to send an officer of higher rank than a midshipman, who would be better able to silence Jones if he

attempted to break his promise to send the men back when the anchor was weighed.

The lieutenant did break his promise. His excuse was that the navigation of the Tagus is notoriously tricky. The shoals at the mouth of it, the Cachopos, have seen many strandings and wrecks. The wind too was unsteady. The prize blundered along and got out only by calling on another man-of-war, the *Kingfisher*, to lend her a boat to tow her head round. Jones was supported by the Portuguese pilots, a class of men, said Lieutenant Stupart, equally ignorant and obstinate, who could think of nothing but of getting their ships over the bar. It was to be sure what they were employed to do, but Lieutenant Stupart had to think both of sending the prize on her way and also of retaining a large part of the crew of the *Sensible*. The men he lent Lieutenant Jones must have formed at least a fifth of her complement. It was late when the *Graaf Bernstorff* crossed the bar. As the men did not return Lieutenant Stupart had to recognize that Jones had carried them off. He had persisted in keeping them till he was at sea with the convoy. Stupart could only hope, so he afterwards said, that they would be taken to England, and would not be subjected to the frightful risk of having to make their way back again in an open boat in the dark, and in the face of a rising gale from the north east, blowing that is to say, off shore. In a few days he and Captain Hay learnt that the worst had happened.

The *Kingfisher* accompanied the convoy as high as Finisterre. She was then sent back by Sir John Orde with his letters to Lisbon. Her captain, Pierrepont, brought one to Captain Hay. In it Sir John Orde said

he had done all he could to take care of "your vessel," but "the inattention of your officer Jones exceeds anything I ever experienced." Inattention was a very gentle word. When Jones found himself clear of the Tagus, and with the convoy, he took a small sloop-rigged open boat belonging to a transport, packed the fifty men of the *Sensible* into her, and sent them off to reach the shore as best they could. The mate of the transport protested, not against the taking of the boat, but against the inhumanity of the decision to send the men away in such conditions. It gives a high estimate of the discipline established by Jervis, that the men obeyed, apparently without hesitation. Yet if ever "mutiny" was morally justified it was on this occasion, when men were sent to certain exposure and suffering, and to almost certain destruction, not in honourable service against the enemy, but by the callous dishonesty and selfishness of the prize master. The disaster feared by the mate of the transport, and, we may be sure, foreseen as probable by the men, occurred. Crowded so close that they could not have used oars (and it seems doubtful whether there were any in the boat), without as much as a lantern with which to make a signal, the fifty sailors of the *Sensible* could not avoid collision with one of the swarm of vessels forming the convoy, all intent on keeping out of one another's way in the gale and the rough sea. The boat was run down and thirty men were drowned. The others were picked up by the merchant ships and carried to England.

Lieutenant Jones would have had to answer for this in any case. But he took other, and perhaps more effectual, steps to bring himself before a Court Martial. The convoy reached the Channel in foul weather. The

Graaf Bernstorff had been somewhat distressed by her voyage, before and after capture. But she was not in worse case than many of the merchant vessels with her. There could be no doubt that Lieutenant Jones could have accompanied Sir John Orde to Portsmouth, if not to the Thames. But no sooner was the convoy round the Lizard, than he left it and ran into Falmouth. This he did, said Captain Hay, selfishly, because he "had a wife in the place." The captain does not say that his lieutenant had other wives in other places, though his words imply as much. The wife whom Lieutenant Jones had in Falmouth helped him to his ruin.

A good part of the testimony given at the Court Martial, held on Lieutenant Jones at Portsmouth, on board the *Gladiator* on the 26th-30th January, 1799, was concerned with a most sordid story of pilferings, by Jones himself, from the chests of the officers of the prize, and of raids carried out by his "ladies," who invaded the *Graaf Bernstorff* and filled their pockets with groceries and sweetmeats. Of from 35 to 40 jars of preserves which had been in her cabin when she left Lisbon, only 18 were in existence when Lieutenant Jones was arrested by an officer sent to take the prize out of his hands. The rest had fallen to his sweet tooth, or the enterprise of his "ladies." Silver-hilted swords, rings, benzoin, coffee, sugar and beef, were transferred to the house of the wife whom the lieutenant had at Falmouth. There is nothing heroic in it all—no bars of gold or bags of emeralds. It was all a story of pilferings from larder, wardrobe and desk. If it was not true what are we to think of the members of the Court Martial who investigated the story for five days,

and at the end sentenced the prisoner to dismissal, and to forfeiture of all claim to a share in the prize. It is impossible to spare both the goat and the cabbages. But the Court was certainly right. The defence of Lieutenant Jones, a long rambling and muddle-headed screech, is more damaging to him than the testimony of hostile witnesses. In substance all he could say was that, "were he on the bed of departing existence, and on the eve of approaching before an all knowing judge," he would still assert his integrity.

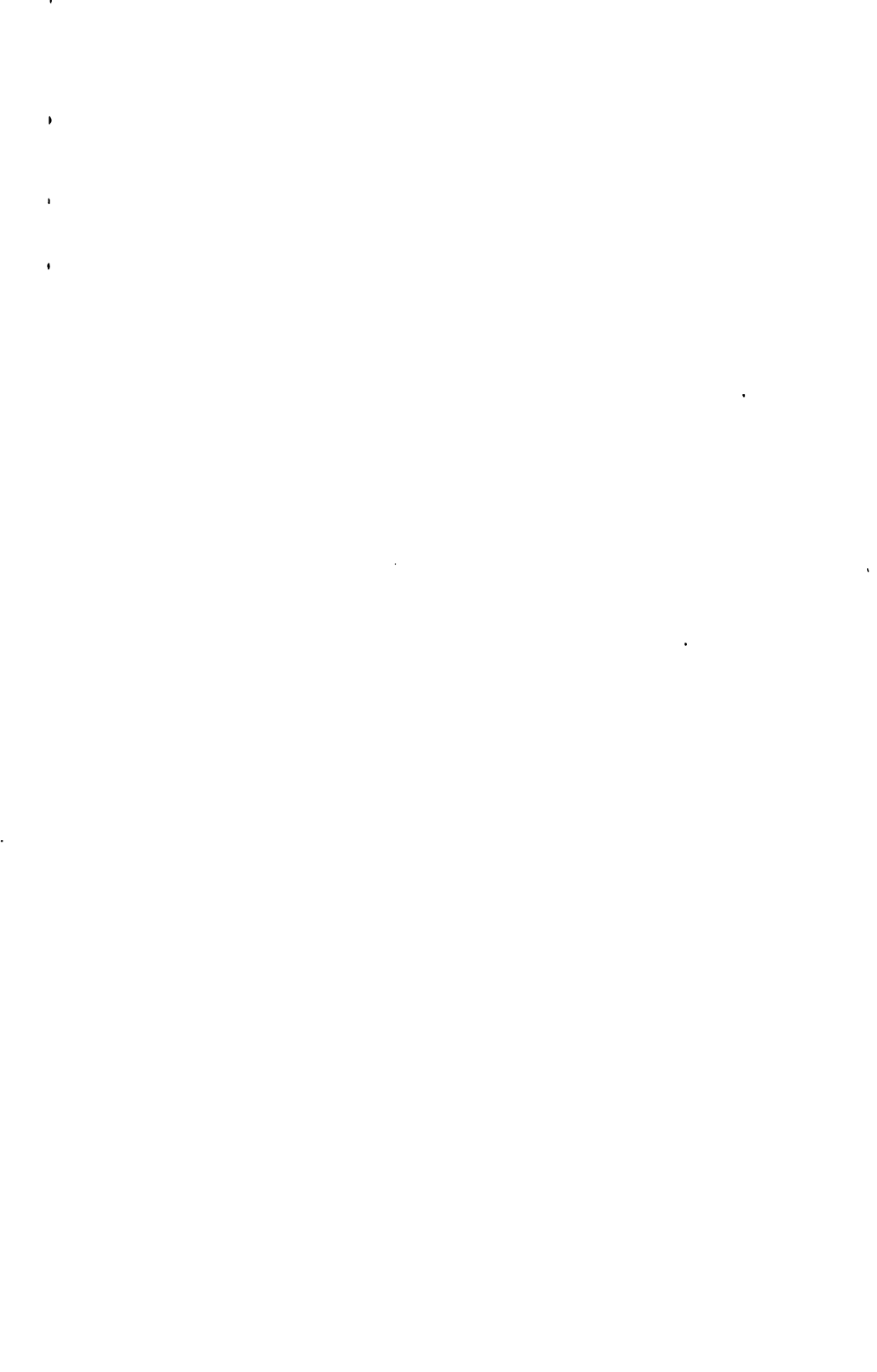
The sordid story of Lieutenant Jones and the *Graaf Bernstorff* is, by its very sordidness, peculiarly useful for one purpose. It shows the ugly side of the whole business of prize taking in all its ugliness. Captain Hay spoke scornfully of the selfishness of his Lieutenant, but the whole system which gave the prize to the captors was an appeal to selfishness, a temptation put in the way of all ranks to subordinate "the service" to their own gain. We see the *Sensible* weakened at a great crisis in the war by the call to tell off men to carry a prize home. When weakened by this obligation her crew had to be made good by squeezing the merchant ships by the press. Men were called away hurriedly to weigh the anchor of the prize. The officer who was in command of the convoy felt called upon to take particular care of Captain Hay's prize. Prize money haunted the minds of all. Jones was plainly a pitiful creature, and he brought out everything that was most mean in the business he was engaged on. His sacrifice of the thirty poor fellows whom he sent to almost certain death, for even if their boat had not been run down they might well have been blown out to sea without cover, food or water, was odious. It

was resented, and yet as we read the testimony of Lieutenant Stupart, we suspect that it was not so much the useless sacrifice of the men as the loss of the means of making more prizes that was the grievance. If Lieutenant Jones had not gone into Falmouth and had not diminished the chance of profit for others, he might have been Court Martialed, but I doubt whether he would have been as severely punished for causing the deaths of thirty men as he was for pilfering the sweets and the rest.

With larcenous dishonesty we should expect to find instances of brutality. And they are there. Sometimes the two were combined. In 1745 we hear of a Captain Bury of the *Solebay*, who after rating one Thomas Rayment midshipman in the prize *Concordia*, disrated him for no other reason than to deprive him of a petty officer's claim to prize money. A Court Martial pronounced his action "unjust," and Rayment was confirmed in his claim. In 1755 we find a Court Martial at the Hamoaze sentencing one Peter Bambridge, prize master in a vessel taken from the French, for brutal misuse of the skipper, Pierre Houlet. The sentence was that Bambridge be "degraded from being any longer a midshipman in H.M. Service, and to serve on board the *Grafton* (till he can be sent to H.M.S. *Antelope*) as a common swabber, after having been exposed in a boat to all the ships in the fleet, bareheaded with his arms tied to a pair of shears, on which is to be carried a swab and broom, and his sentence to be read alongside each of H.M. ships in Hamoaze, on the 22nd January, 1756, by ten in the morning."

We sympathise with the indignation of the Court, but it is to be observed that Bambridge escaped without

the torture inflicted on Hervey who diminished the common fund of prize money. To be done with a grimy subject I note that in 1797, Lieutenant Henry Dodds of the *Caroline*, off Cadiz, was brought to book for wantonly wounding the skipper of a Danish vessel which it was his duty to search. And so enough of a side of the old Navy, of which much more might be said if it were worth any man's while to compile superfluous, and also monotonous, examples of what those alone will deny who know, and wish to know, only so much of our naval history as flatters our national pride.





The Rev



Revol of the Fleet

CHAPTER IV

MUTINY

Admiral Patton, who wrote at the end of the eighteenth century, could say that, in the course of his service in the Navy, he had witnessed no less than forty mutinies. His experience may have been exceptional, but he was certainly not the only officer who had seen repeated examples of these outbreaks of disorder. The reader who hears of the Navy as having been "ever victorious," may be surprised to learn that it was at all times in a state of latent, or acute, rebellion against authority. He may well ask how, if this was the case, we can account for the long cruises, victories in battle, and vigilant blockades of the fleet. Yet the fact was as I have stated it, and the apparent contradiction between an ever present disorder, or possibility of disorder, and the discipline, without which there is no efficiency in a fighting force, can be explained easily enough.

Mutiny, as has already been said, is a word of wide significance. John Deane, mariner, of the *Pearl*, who, when tired by a heavy night's work, was brutally driven by the boatswain, and was exasperated into threatening to throw him overboard, was guilty of mutiny. But this was a more or less excusable explosion of rage on

the part of a single man. The crews of the fleet at Spithead who combined to coerce the government were guilty of no more than mutiny, but theirs was an act which endangered the country. The great majority of "mutinies" were nearer the blind form, of poor John Deane, than the deliberate rebellion of the Spithead mutineers. It is obvious that this constant recurrence of "mutiny" was an evil, and nobody will deny that it was the outward and visible sign of some inward disease. There is no difficulty whatever in discovering what it was. John Deane was maddened into threatening to throw the boatswain overboard by the bestial fury of that warrant officer, who thrashed him, and yelled abuse at him in the mere indulgence of his own filthy temper. That kind of mutiny has been treated already under the head of discipline. This is the place for dealing with the other kind of mutiny—that which culminated at Spithead in 1797.

It was the acute manifestation of a chronic and absolutely just discontent with the way, and the times, in, and at which, the sailors were paid. When the establishment of the Navy was a summer or winter guard, maintained for a few months, and when in war fleets were formed to go out on some single expedition, and return as soon as it was executed, there was no injustice in paying the men at the end of the commission. The sailor who served the King was in the same position as when he sailed for the merchants. But when commissions began to last for years, what had been a common usage of the sea became an oppression for the seamen of the Navy. In 1758, George Grenville, then Treasurer of the Navy, succeeded in passing a bill which brought some amendment. It enabled the men

to assign part of their wages to their families, and it provided that, when they had served for a year and their ship came to a home port in which there was a commissioner authorized to pay wages, they were to be paid up to within six months of the date at which payment was made. If the men could have been sure that they would always remain in the same ship the evil would have been comparatively tolerable. But they could be "turned over" from one to another, perhaps from a homeward bound vessel to one which was to remain on the station. And this might happen to them over and over again. Their "pay tickets" were sent from ship to ship. When they were finally released, they had to recover their money from the Pay Office through delays and formalities. Necessity often drove them to sell their pay tickets to traders whom they called "Jews," not because these bankers of low rank were always Hebrews, though some no doubt were, but just as they called the chaplain a "mufti," or a "padre," by nicknames picked up in the Levant and in Spanish ports. The worst case of all was when the crew of a homecoming vessel found that they were to be turned over to another which was "going foreign." This was what Nelson called "the infernal system," and because of his detestation of it, he said that "his heart was with" the mutineers at Spithead. He was not the only officer who felt the same sympathy for the men when they broke into "mutiny" against their unfair treatment. These so-called mutinies were in fact simply strikes. When we bear this distinction in mind it becomes easy to understand how the Navy could be at once "mutinous" and quite efficient in battle. The very men who broke out for their "rights"

would cheerfully man a boat on a "cutting out" affair, or stick to their guns in battle with the French. There goes a story that, when the crew of one of the vessels commanded by Cornwallis growled that they would not fight, he replied that they were talking nonsense, for he would jam the ship alongside the first Frenchman he met, and then the devil could not keep them from fighting.

There remains the case of mutiny pure and simple, when men broke loose from all discipline and seized, or tried to seize, a ship, with the intention of taking to piracy, or handing her over to the enemy. But such cases are extremely rare, and their rarity in generations when vast spaces of sea, and long stretches of coast, offered a safe refuge to the pirate, is proof sufficient of the essential loyalty of the sailors.

A case of mutiny unqualified, and in the highest degree, came before a Court Martial, composed of Aylmer as President, Benbow, now Rear Admiral of the Blue, and twenty-eight captains, on board the *Victory* at Spithead, on the 7th December, 1696. The prisoners were John Lamshead, Edward Samms, John Ponnet, and Thomas Evans of the *Dolphin*, and they were accused of mutiny on board a prize taken at Vigo, and of endeavouring to run away with her.

The prize was a French privateer of ten guns, captured by the *Dolphin*, and carried to Lisbon. Lieutenant Wilkingson of the *Dolphin* was put in command with a crew of eighteen men. Robert Leader was given him as master, George Taylor as carpenter, and John Lamshead as gunner. The *Dolphin* was appointed to convoy the homeward bound trade, and

the prize went with her. Shortly after the voyage began, one of the merchant vessels was found to be leaking so badly that she could not keep up with the others. The prize was ordered to remain by her, and the convoy went on its way. Lieutenant Wilkingson, we learn, was one of the officers of the time who were prompt to strike. He gave his carpenter, Taylor, a blow, and this piece of brutality must have made the man the more disposed to take part in what was to follow. When the *Dolphin's* prize and the lame duck under her charge were some 230 leagues to the W.N.W. of the Rock of Lisbon, and between the hours of eleven and twelve at night, Mr Wilkingson underwent the unpleasant experience he records in his deposition :

“ The said Robert Leader, George Taylor, John Lamshead, Edward Samms and John Ponnet, and Goodall and others, mutinied and came into this deponents cabin, knocked him down and confined him with two [? sentinels] continually in his cabin, saying the ship was theirs, and they were men of fortune*, and took into their custody the ships arms, broke open the deponents chest took away his books, instruments, journals, wearing apparel money and all that he had that was belonging to him, saying also that they had given His Majesty £2000 wages, and Capn Delavell [of the *Dolphin*] their tickets for the *Oxford* so that they had well paid for the ship†, and would make their fortunes in her, being bound for the West Indies, they being very well satisfied with the ship, and that the three Kingdoms could not match her, and that the deponents commission should serve them till they got a fresh one, which they doubted not to do in a month's time.”

* Cf. soldiers of fortune—men who had to seek and follow fortune since they had none of their own.

† The £2000 was a poetic licence. They cannot have earned that amount among them. But it was no doubt true that they had received no pay since they had served the King ; that they had been “ turned over ” from the *Oxford* to the *Dolphin* ; and that their pay tickets had been given to her Captain to be handed over to them whenever they should be paid off. All the money due to them would be forfeited, and so in their opinion they had paid for the French prize. Here we see how the men resented the unjust system described above.

The commission which these jocular ruffians had in their minds was perhaps to be obtained from some unscrupulous colonial governor in the West Indies, of one or another nationality, or was perhaps just the commission carried by the "men of fortune," who "hailed from the sea" in those lawless waters. Yet the wildest buccaneer spirits shared Gregory's liking for having the law on their side, or a colourable imitation of it. They could feel reasonably confident. They had possession of a ship which was

"both swift and stout
All furnished well with small arms and cannon round about."

Friends and recruits they would not lack in the Antilles, or in North Carolina. They had but to fill up their numbers, obtain food and water, then sail for the Red Sea, plunder the "Moor Ships" round Babs Key, and return with their booty to the plantations, where they were sure of a welcome. In 1696, only two years had passed since Avery had seized the *Charles II* at Corunna, and had started on just such a cruise. So far the fury of the Great Mogul and the lamentations of the East India Company had not roused the British government to take more effectual measures with piracy. Unfortunately for themselves they were ill provisioned for a voyage to the West Indies, and they wished to get rid of Wilkingson, whom they were not prepared to murder. So they sailed to St Michael's in the Western Islands, *i.e.* the Azores. A boat was manned by the more resolute of the mutineers. Wilkingson was put in it. An attempt was made to land him and obtain provisions but the surf was too dangerous, and the boat came back. Leader declared that if the lieutenant

was not landed by next morning he would be killed. But the mutineer's bark was worse than his bite. He threatened some of the crew who were reluctant to join in the mutiny, saying "they might call him an honest man if he did not cut their throats within twenty four hours." He added that he would have killed them there and then if it had not been late in the afternoon, and if he had not respected the laws too much to execute a man after midday. Ten to twelve were the lawful hours of execution, and the sailor is respectful of ancient usage even when he mutinies.

They now went round to the north side of the island, and made a second attempt to obtain provisions. But the suspicions of the Portuguese were aroused. The boat's crew was met by a strong force and disarmed. They were then sent back with a message that the captain must land and show his commission. It would seem that Leader and Taylor, who were the moving spirits, lacked resolution. They landed next day, leaving the vessel in charge of Lamshead, and Wilkingson still in her. When they landed they were marched off to the British Consul who lived six leagues away. Meanwhile Wilkingson succeeded in persuading Lamshead that it would be better for him to come home and earn a pardon by giving himself up. The lieutenant was no doubt supported by those of the men who were driven into the mutiny, as also by a Spaniard who was on board, and a Mr Rawlings, described as a "reformado," that is to say, a man who had had a commission but had in some way lost it, and was serving as a volunteer in the hope of getting another. The *Dolphin's* prize was brought home by eleven of her original crew of eighteen, and the other seven,

including Leader and Taylor, were left to their fate at St Michael's.

The four men brought to trial were sentenced "to be hanged at such time and on board such ship as Mylords shall appoint"—that is to say they were remitted to the Admiralty as fit subjects for mercy.

From the West Indies there came an unceasing call to the wild and criminal spirits among seafaring men.

In 1698 a midshipman of the name of Beare, the boatswain Melby, and Moody, a boatswain's mate, of the *Speedwell*, a ship which was under orders for the West Indies, laid a plot to seize her and to murder the officers. It never went beyond confabulations in the boatswain's cabin, which were overheard by one Richard Brookes, who was eating his supper near the door. Moody too betrayed his associates. Beare was sentenced to be hanged on the *Restoration* at Spithead, and Melby to be flogged alongside of three ships at Spithead, and three in Portsmouth harbour. At the close of the War of the Austrian Succession, a besotted creature of the name of Couchman, a lieutenant of the *Chesterfield*, headed a mutiny at Cape Coast Castle, during the absence of the captain and other officers. The mutineers gained temporary possession of the ship and took her to sea. But the loyal men recaptured her, and the ringleaders were brought to justice.

Nearly eighty years after the abortive plot of Beare, a similar, but much more interesting, case occurred on the *Culloden*. In 1779, the vessel of that name, the predecessor of the *Culloden* of Troubridge, of St Vincent, and of the Nile, was homeward bound from Halifax. She was commanded by Captain George Balfour, and she carried a number of prisoners of war, both French

and American. Among the Americans were all the officers and the crew of a privateer, the *Royal Lewis*, taken by the *Culloden*. But all the French and Americans in the ship were not prisoners. One of her petty officers, whose name is given as Grennard, was a Frenchman. Another, who called himself Augustus Murphy, and described himself as an American, was doing duty as a midshipman. How Grennard came to be rated quarter gunner does not appear from the records of the Court Martial, but his presence and the way in which Murphy was enabled to hold his position as midshipman, will throw, for some readers at least, an unexpected light on the constitution of our crews in the eighteenth century. When Captain Balfour applied to the Admiralty to order a Court Martial, he said that "the said Murphy was master of an American vessel taken and carried into Halifax, where he was in prison. He entered voluntarily for the *Culloden*, if I would allow him to walk the quarter-deck, and he did the duty as midshipman till the scheme was discovered."

There has been occasion already to mention the practice of allowing foreigners and prisoners of war to enter "voluntarily" into our Navy. For the moment our business is with Murphy. Whether he was, as he said, an American, or was one of those Irish emigrants who were among the most bitter foes of the Home Government throughout the War of Independence, he was certainly a very dangerous man to be entrusted with even a midshipman's authority, and with freedom, in a British man-of-war which was carrying prisoners. He spoke French fluently, and is said to have spoken Spanish. Whatever else he was, he was manifestly

both ambitious and unscrupulous. The *Culloden* was short-handed. If she had not been undermanned Captain Balfour would not have gone to the prison at Halifax for "volunteers," and still less would he have consented to allow a prisoner of war to "walk the quarter-deck." Some even of the ship's reduced crew were sickly.

Encouraged by the weakness of the *Culloden's* crew, and the number of the prisoners, Murphy laid his plot. He calculated that the prisoners would readily follow him. He relied on the French quarter gunner to help him to obtain possession of firearms, and he did not despair of securing the support of some of the crew. His plan was to rise in the night, overpower the guard on the quarter-deck with handspikes, murder Captain Balfour and the other officers, and take the ship into a French port. He said he had secured the support of the French prisoners, but that assertion was not tested. The captain and lieutenant of the American privateer refused to cooperate. The captain declined on the ground that, weak as the *Culloden's* crew was, it would probably be too strong to be overpowered in the way Murphy hoped, and he added that even if the revolt succeeded, there remained the danger of a meeting with one of the many British men-of-war then at sea. As a prisoner of war he held himself free to seize the ship if he could, but he thought the venture too rash. He added not unkindly that whereas the penalty of failure for him would only be imprisonment, Murphy was risking his neck. The privateer lieutenant said that he refused to have anything to do with Murphy. Neither of them betrayed him, and we may take it for granted that if the plotter had once gained

command of the upper-deck with the help of the French prisoners and mutineers among the crew, the Americans would have joined him. He failed because the plot came to the knowledge of one of the ship's cooks, who, to judge by his name, Cato, was a black. Cato told the whole story to Captain Balfour, after dinner, on the very evening on which the attempt to seize the ship was to have been made. Murphy was of course seized and put where he could do no mischief. He was brought to trial on board the *Formidable* on the 10th June, before a Court Martial, of which Admiral Digby was President, and Edmund Affleck, who distinguished himself at the battle of Dominica in 1782, was a member. He was condemned to death mainly on the evidence of the two Americans, and the cook Cato, and made no defence.

Though the cases of mutinous seizure of a ship, and desertion with her to the enemy, have been few, there have been more of them than the country has been willing to remember. The list is not exhausted by the mutinies of the *Hermione* and the *Dunade**.

One case, that of the *Jackal* cutter, has a peculiar character, and its date is significant. In 1779 the cutter was at Dover, under orders to sail on convoy duty to the Baltic. The commander, Lieutenant Gibson, had landed on the 5th December to make his weekly report to the senior naval officer, and was not to return on board that night. The master was also absent. When the cutter had received her orders, he found that there

* These two stories have been often told, and are to be read in all the most commonly known histories. I wish as far as possible to avoid retelling what is already widely known, and shall therefore not repeat these tales, nor that of the *Chesterfield* which also is familiar. She too was not taken over to the enemy.

was no chart of the Baltic on board. None were to be found in Dover, and he was compelled to go to Ramsgate before he could obtain one. The *Jackal* was in charge of a midshipman, who plays no part in the story. There was also a pilot on board. In the middle of the night he was awakened by an unexpected noise of work going on, and felt at once that the cutter was under way. He left his cabin to make inquiries, knowing very well that something wrong was happening. The cutter could not be lawfully under way at that hour, in the absence of the commander and the master, and without notification to him. If he had any doubt as to the cause of the irregularity it must have been answered at once, for he discovered that all three hatchways were fastened. He thumped and shouted to the watch. Somebody on deck called out in reply that the cutter was being taken round to the Channel. The pilot returned to his cabin, looked at the compass, and saw at once that the *Jackal* was being steered to the east, in the direction of the French coast. He again called out to the deck, saying that the watch was lying to him. Then one of the watch pointed a pistol through the side window of the skylight, and told him that he would be shot if he gave trouble. When others of the crew, who were also shut under the hatches, endeavoured to force their way on deck, they were cowed by a threat to fire a four-pounder among them and sink the cutter. The mutinous watch could well have executed their menace, for they could have taken to the boat, and have left those who were under hatches to drown. The threat proved effective and no attempt was made to recapture the *Jackal*.

After a little while the pilot was allowed on deck.

He found the watch armed with pistols and cutlasses, prepared to despatch all who resisted them. Though they abounded in the usual filthy language of disorderly naval rhetoric, the mutineers did the pilot no harm. Even when he declined to take the cutter into Calais, saying that he did not know that harbour, they used no violence, though they cannot have believed him. One of the mutineers undertook to carry her in, and succeeded, though not till she had touched twice. The mutineers, who spoke freely and, as it would seem, without ill will to the pilot, when they found they had nothing to fear from him, did not allege any grievance, nor make any charges against their officers. They only said that "their liberty they wanted, and their liberty they would have." The *Jackal* was handed over to the French and I do not find that any of the mutineers were brought to trial. A Court Martial held on the *Syren* at Sheerness, on the 28th January, 1780, acquitted Lieutenant Gibson of blame, on the ground that he had a valid excuse for his absence from his command.

The years of the American War of Independence were rich in examples of a mutinous spirit, when not also of downright mutiny. Wilkes and Liberty at home, and the example of the "Plantations" oversea, could not but have some influence. The corruption, and, not less than the corruption, the muddle of naval administration under Sandwich, did nothing to counter-balance the evil. There must have been an extraordinary spirit of indiscipline about when the crew, or at any rate a considerable part of the crew, of a man-of-war could hope to gain anything by sending such a document as this to her first lieutenant.

“ The humble petition of the *Defiance's* ships Company.

Sir. We humbly hope you will stand by us in this our undertaking which we will gratefully return in weathers [*sic* ? all weathers in all hardships whatsoever be them ever so great or dangerous.

We are fully determined never to sail with Captain Jacobs from this here place, from what we have experienced since we left England we may easily know our predestination [*sic*] he has broke his word to both with our admiral, and his ships company in many measures since we left Torbay and for future we are likely to live in oppression and poverty whilst governed by him, our intentions is to fight for our King and Country, and as far as we can immaging [*sic*] of late he has no regard to it.”

This was nothing less than an invitation, from at least a part of the ship's company, to the first lieutenant to head a mutiny. Such documents as these, and they are not very uncommon, were written in sections by several men, each of whom penned a few words. The purpose of this division of labour is so obvious that it need not be pointed out.

If mutiny in this degree was rare, the other form of mutiny which was an outbreak of violence against ill usage was common and constant. Very early in the long series, if not at the actual beginning, came the mutiny on the *Mary* at the Nore in 1697. Her crew found that they were to be turned over to the *Weymouth*, and in their anger they mobbed their captain, Poulton, who received little support from his officers. The reports are fragmentary, and it is not possible to learn from them exactly what happened. It is clear that the officers forming the Court Martial had, in a quiet way, a good deal of sympathy with the men. They passed sentence of death in two cases only, and then left the Admiralty to fix the time and place of execution. They dismissed one witness on the ground that he had been drinking on the day of the mutiny, and was not to be trusted.

Examples of such mutiny as this might be quoted all through the century. One more may be given here, to supply a connecting link between early time and the great general outbreak of 1797. On the 10th March, 1779, a Court Martial, of which Captain Nicolas Vincent was President, and John Colpoys, who, as admiral, was to be in the very midst of the Spithead outbreak, was a member, sat on board the *Blenheim* in the Hamoaze, to try for mutiny—John Carr, John Singleton, Thomas Lambeth, William Cook, William Antrobus, Robert Naggs, and Andrew Thompson, of the *Egmont*, Captain Allen. We have met Allen already, and now, as in the other case, the trouble was largely due to the fact that he was absent from his ship. He had gone without signing the books, and without his signature the men could not be paid. When then the crew was ordered to muster one evening the command was met by a general refusal, and a cry of "Pay, Pay." The officers showed themselves, as they very commonly did on such occasions, patient and sympathetic. The officer of the watch, Mr George MacKenzie, the third lieutenant of the *Egmont*, and the fourth lieutenant, Mr Henry Pullen, appealed and argued. MacKenzie pointed out that the pay could not be given without the captain's signature, and promised that efforts should be made to secure it. He called upon the crew to behave like men. If they had listened to him, it is highly probable that nothing more would have been heard of the incident. But the men were obstinate, and refused to leave the lower deck. Pullen went among them, and endeavoured to bring them to reason by pointing out that after all their money was only a month due, and that "ships were seldom paid in the

course of that time." He had named the grievance. When he took a lighted candle, and tried to arrest some of them, the light was knocked out of his hand, and he was pelted with pieces of chalk. Other officers dragged him away, in fear lest he should be worse used. Next morning, as the Egmonts were still obstinate, an appeal for help was made to the flagship, the *Blenheim*. Marines were sent in sufficient numbers and order was restored.

The prisoners who were singled out as the ring-leaders had, of course, no defence which could be laid before the Court. Three, Carr, Singleton, and Cook, were condemned to death. The others were sentenced to receive 300 lashes each, except Antrobus, who had yielded to the persuasion of the officers. His tardy repentance was recognized by a remission of 50 lashes of the three hundred.

Appended to the records of the trial is a copy of the petition of the three condemned men.

"The humble and important request of us three seamen on board His Majesty's Ship *Blenheim*.

Sheweth My Lords.

We the unhappy condemned objects never willing to offend now prostrate ourselves imploring Mercy strangers to Mutiny or disaffection always ready to obey but now led away thro' error Misguided by insinuating men fell a victim to the martial law pity our misconduct and be merciful to us take not away our lives but spare us from the approaching and gloomy day being young in the service that we may live to be an honour to our sovereign and help to our country promising a sincere obedience to all commands we beg leave to subscribe ourselves My Lords your Lordships most unhappy petitioners."

It was a pitiful appeal, and it was one of many which went up to the ear of authority, usually with success. In the Navy, as on shore, the ferocity of the sentences

was nullified by the unwillingness of the judges to permit the execution. Even in 1797, the year of the great mutinies, and in the North Sea fleet where the disorders were at their worst, only a minority of the men condemned to death actually suffered. It would be hard indeed to create conditions more certain to lead to some culminating outbreak of mutiny, than a combination of real grievances, with the presence of unruly elements in the crews, and an alternation of severity and weakness on the part of the chiefs. We can see the whole process from beginning to end in the story of the mutiny on the frigate *Santa Monica*, in English Harbour at Antigua, in 1781. The Court Martial held on board the *Barfleur* at St John's, on the 20th—24th July, gives as complete a picture as we could wish to find of the growth and explosion of a mutiny such as the vast majority of mutinies in the British Navy were. It was a very different thing from the murderous outbreak of the crew of the *Hermione*, or the obscure but nearly identical case of the *Marie Antoinette* schooner, whose men murdered their commander, Lieutenant McInderhenny, and gave the vessel to the French at Gonaives. But, for that very reason, it was the better as an example of the conditions which led to the great disorders of 1797.

It is but just to say that by far our best witness was Linzee, the captain of the *Santa Monica*, himself. Throughout the whole of the trial he kept asking the witnesses whether it had not been his constant practice to forgive his men for all "the crimes," by which he meant offences against discipline, they committed. He meant to show that he had not been a harsh or tyrannical captain. He unconsciously did his best to prove that

he had been very weak. It is of the very essence of discipline that no unnecessary orders shall be given, and that no order shall be disobeyed with impunity. Captain Linzee made it perfectly clear that there was much fussing in the giving of orders on board the *Santa Monica*, and a plentiful lack of firmness in enforcing obedience. He asked, almost pathetically, whether on all those occasions on which the crew could reasonably allege that they were driven, he had not been hard worked himself. The witnesses all agreed that he took infinite pains. They do not say, in so many words, that much of the work was created by his own fretful interference in what he had far better have left to his subordinates. That this was the case can be read between the lines, and in the reticences of the questions and answers. But Captain Linzee could not deny, and being as his candour proves an honourable man, did not attempt to deny, that his nervous fussing was carried to extreme. The chief complaint of the crew was that they were kicked, beaten with a rope's end and a speaking trumpet by him. He made no attempt to deny that this was the truth, but only asked whether he had ever been seen to beat a man "barbarously." The witnesses allowed that he was not "barbarous," but it is to be noted that they were careful to add that they had never in the course of their service known a captain actually strike one of his crew. It is manifest that Captain Linzee was an officer who worried, gave way to feelings of irritation, multiplied threats of punishment, and then shrank from carrying them out. Discipline, in a serious sense, is impossible with such methods, whether in a ship, a regiment, a school or a nursery. A good ship's company would have been

spoilt by handling of this kind. Captain Linzee pleaded that his crew was not good, but lazy, lubberly, lacking in alacrity and briskness. The witnesses confirmed him, but some of them added that the men were quiet and manageable, though slow. They were not asked how they supposed the crew would have behaved under firm and consistent command. We can make a pretty confident guess at what their answer would have been if the question had been put. To complete the picture it should be said that the men complained of being deprived of their meals, and of being denied a proper supply of water. Captain Linzee asked whether he had not always given strict orders that they were to have an hour for breakfast and an hour and a half for dinner, and whether he had not taken care that they should be allowed plenty of water from the butts to make their "tea, coffee and chocolate." It was not denied that he had given these orders, or indeed that, whenever the men did have to go without their meals, it was in some pressure in which the captain also went without his dinner. On the whole we gather that the Santa Monicas were alternately fretted and pampered. This captain also was, in the figurative language of Nelson, "a fiddler," and the ship's company was in consequence "damnably out of tune."

The almost inevitable discord broke out on the 16th July, early in the morning, in the form of an artistically complete mutiny. No particular incident is quoted as having brought a growing disposition to disorder to a head. The captain was on shore on duty. The men refused to muster, and gathered in the "bay"—that is, the bow of the ship where the sides curve in to the stem, and on the main deck. The first

lieutenant, Mr Leekey, tried to persuade them to return to their duty. He and other officers argued with them, to no purpose. The men shouted that they were ready to fight for their King and Country, but that they would have either another captain or another ship. They were, they said, now in a King's port, with other frigates on either side of them, and this was their opportunity for getting justice. The reference to the other frigates looks as if the men relied on support from their crews, as if, in fact, they proposed to make a rehearsal of the "breeze at Spithead." But there is no sign of disorder in these other vessels, the *Pegasus*, *St Eustatius*, and the *Etna* bomb. The men appear to have relied on the effect of a public statement of grievances. In the course of the trial a good deal was said about one cause of complaint. When the *Santa Monica* was in Gros Islet Bay, and the anchor was being weighed, Captain Linzee thought the men were not heaving energetically enough on the capstan bars. He sent a boatswain's mate to "frap*" them as one of the sailors put it, or, in the words of the first lieutenant, to "freshen" them—with a stick.

In this case, as in that of the *Egmont*, we see that no immediate measures of coercion were taken. The officers expostulated, pleaded, promised redress of all grievances. The men refused to listen, and would only say that promises had been made to them before and had been broken. They would have a new captain or a new ship.

Mr Leekey sent a message to the captain, who

* To frap in its technical sense was to undergird a ship with a cable when her timbers were strained. But the word could be used as meaning to snap the fingers, or to beat.

returned accompanied by Captain Stanhope of the *Pegasus*, and the process of argument and expostulation began again, to equally little purpose. Till four o'clock in the afternoon the men remained in the bay doggedly. Captain Linzee was unwilling to use force if he could help it. Only when it was plain that the mutineers would not come out, and after taking the advice of Captain Stanhope, Captain Sutherland of the *St Eustatius*, and Captain Iggleston of the *Etna*, did he at last call in the marines of his own ship, and of the *Pegasus*. He wished to accumulate an overwhelming force as a last hope of avoiding the necessity to fire. When he had paraded the marines he went down accompanied by a sergeant and three men to attempt to smooth the mutiny by persuasion once more. At the sight of the marine uniforms, the sailors broke out into oaths, shouted "in scuttles," and threw whatever they could lay hands on. Then Captain Linzee gave the order to fire. It was obeyed. One man, Donovan by name, was killed and the others then surrendered.

A whole crowd of prisoners appeared before the Court Martial. A large proportion of the names are Scotch, and some of them, Magnus Ninian for one, show that there were Orkneymen and Shetlanders in the body. The islands were defenceless against the press, and always contributed largely to the Navy. The Court discriminated. Several of the accused were acquitted, but, as a matter of course, the death sentence was passed on the majority. One man, Hirst, who was accused of having been a chief ringleader, was tried separately.

The history of the great mutinies has been often

told, and need not be repeated here. Our business is with the conditions which produced them. These conditions are, I trust, sufficiently illustrated by the cases quoted above. At the foundation lay the permanent discontent of the real seamen with the amount of the pay, and the discontent of all classes with the method and times of payment, and the long confinement to the ships. The abuse of the rattan by petty officers was resented with growing force as the century drew to a close. The men knew that only the captain had a right to inflict corporal punishment, and that even then they had a right to demand a Court Martial. The "starting," "freshening," "driving" of the crew with sticks was an illegality practised by the very officers who were often extreme in insisting on an exact compliance with their obligation to obey on the part of the crew. All officers were not unfeeling, and, by a natural reaction against excessive severity, some of them were lax. There was a general inclination on the part of the great chiefs and the Admiralty, to temper the administration of the law of the Navy by not putting sentences of death into execution. There was in short neither fairness of treatment nor uniform severity in enforcing obedience. Perhaps there was at the back of the minds of the higher authorities a haunting fear that a too consistent severity might produce some such general outbreak as did actually occur in 1797. Certain it is that nothing was wanting to produce the explosion except opportunity. The "breeze at Spithead" differed from innumerable other mutinies which were of the nature of strikes only because it was general, not in method or aim. The more violent disorders in the North Sea were due to the presence of a larger proportion

of the criminal element in the crews. The beginning of a better time for the sailors dates from that year, but the full effect of the improvement could not be felt at once. Every great storm is followed by an after heave of the sea. Mutinies continued to occur.

Two years after the end of the great mutinies we find a case which is interesting on more grounds than one. Comment can be left till the tale is told, and it shall be given in the words of one who, if he was not the person most concerned, is for us the most valuable, and also the most sympathetic, witness—Captain John Inglis of the *Belliqueux*. Captain Inglis and his ship had been honourably conspicuous in the battle of Camperdown. Immediately after the battle there went about a story which, whether it be exactly true, or artfully improved in the telling, is evidence as to his character, and to the estimation in which he was held. It runs that when the fleet was bearing down on the Dutch line, he grew puzzled over Duncan's signals. His strife with the signal book failed to lend him the desired light. He gave up the struggle in despair, but not with the least tendency to seek or find an excuse for hanging back. Far from it. He threw the signal book on the deck and seeing by instinct the true path of salvation, cried in an heroic fury "Daum the signal buik, Putt her hellum up and gang into the middle o' it," and into the middle she went. A man who spoke and acted thus, or even who was believed by all about him to be capable of so speaking and acting, had a stout heart. It is not equally certain that he had a clear head. Taking this to be the truth concerning him, we may now listen, with a predisposition to do him even-handed justice, to the story he

told a Court Martial, sitting on board his own ship, on the 24th January, 1799. It runs :

“ That Robert Nelson the prisoner was confined on the 19th November on the accusation of Edward Lloyd for having cut the breechings and tackles of the maindeck guns, but on my investigating the matter and there not appearing sufficient evidence to convict him by Court Martial instead of applying for a Court Martial on him, which I was very anxious about, I took the advice of Lord Duncan the Commander-in-Chief and Captain Hope. They told me that they thought there was not sufficient grounds to bring the prisoner to trial as there was but one evidence, and they also thought, as I did, that a Court Martial would in that case do an injury to the service. I proposed to punish the man at the gangway. When Vice Admiral Dickson took the command I asked him his opinion on the subject. The Admiral thought that if there was not ground for a Court Martial, and which he was in some doubt of, the man should be liberated. I went on board and had the man brought to the gangway, and ordered him to be punished with two dozen with a Thief’s cat* *to see if I could draw anything from him.* At the moment the lash was to be applied, the man being stripped and seized up, he said he would tell something relative to the cutting the tackles and breechings. All the officers were present. They without my asking their opinion recommended to cast the man off, and hear what he had to say. He gave me information of other two men, William Thomas, and Matthew Welsh. I then ordered them all to be put into irons, and to be kept apart, and then I tried by every means in my power to investigate the matter by sending the officers and the Master at arms amongst the ship’s company, and examining the three men before Mr Richardson [the First Lieutenant] and some other officers in the cabin, and not being able to get more than one evidence against the prisoner Nelson, and Nelson’s only against William Thomas and Matthew Welsh, which I thought was weaker than that against Nelson, *as I conceived Nelson’s evidence arose from the fear of punishment,* and Lieutenant Richardson recommending too that if there was not grounds for a Court Martial, the whole of the men should be liberated—after keeping the men some days in confinement my conscience told me they ought to be liberated, and I considered Nelson in the light of a King’s evidence. I let him and them out of irons.”

If ever an officer had cause to pray his heart in aid of his head, it was the hard fighting captain of the *Belliqueux*. He first threatens a man with the thief’s

* The cat which had nine knots on each of its nine tails.

cat in order to see what he can draw from him, then reflects that what he has drawn was extorted by fear of punishment, and concludes with much appearance of reason, that this fact greatly diminishes the value of the evidence he had obtained. It manifestly never occurred to him that he had tried to obtain evidence by a threat of torture.

If the decision had rested with Captain Inglis the matter would no doubt have stopped there. But his first lieutenant took measures to make as certain as might be that it should not stop there. He wrote a strongly worded letter to his captain, insisting that a Court Martial must be held on Nelson, in the interest of discipline. The recent disorders in the *Belligueux* had, he said, reached such a point that there was "robbery on the quarterdeck in noonday before the captain and officers, collaring and striking the petty officers, destroying the ventilators, cutting away the trawl and trawl rope*, using language tending to excite mutiny and confusion, and three days ago, nearly demolishing the bellows of the forge, and as it is impossible if a period be not put to such conduct to foresee the consequences that may ensue."

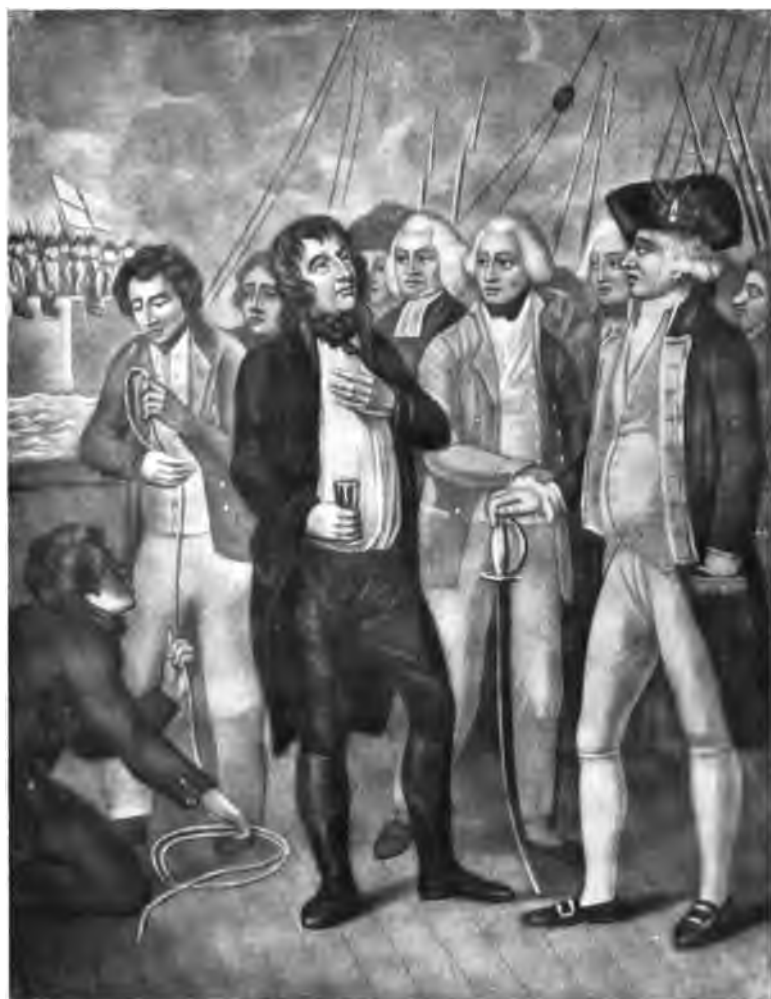
Captain Inglis applied for a Court Martial on Robert Nelson, and when it met laid before it the statement quoted above, no doubt by way of explanation of, and excuse for, his delay. The Court Martial was puzzled, for it was inclined to think that Captain Inglis had condoned the offence. It adjourned, and transmitted the papers in the case to the Admiralty, which in turn put them before the "counsel learned." The opinion

* The ships in the North Sea mended their diet by fishing. Cf. the story of Nelson, Sir Hyde Parker and the turbot.

of Mr Percival* is included in the papers relating to the Court Martial. It is plain that Percival's feelings as an English lawyer were severely shocked by the proceedings of Captain Inglis, which he described as "improper and irregular." But he saw no reason why the Court Martial should not proceed. Nelson had not been either condemned or acquitted, and he told the officers that one witness was sufficient if he was credible. The man was accordingly tried, and condemned to the usual kind of punishment.

There can be no doubt that he was guilty, and the offence was very gross. To cut the tackles of great guns when, as was the case, the ship was labouring in a violent storm, was a far more malignant action than the corresponding military sin of cutting harness. If it had had its effect the guns would have broken loose. The lives of men and the ship herself would have been endangered—perhaps destroyed. That Nelson risked his own life with others shows the utter recklessness of his type. But the statement of Lieutenant Richardson, who appears to have been by far the most clear headed man concerned in the whole transaction, and who was not contradicted, proves that the *Belliqueux* was "a regular built privateer," and that two years after the mutinies of 1797 the leaven of mutinous disorder was still working in the fleet in the North Sea. No doubt her crew had fought finely at Camperdown, and Nelson may well have done his duty among the best. The fact is that he and his like delighted in a fight. They rejoiced in a set to with the Dutch every whit as gaily as they did in "collaring and beating" a petty officer.

* Spencer Percival, Solicitor-General, Prime Minister in 1809, who was murdered by Bellingham in 1812.



The Execution of Richard Parker

When the occasion fitted the virtue they served their country in a way congenial to themselves. When, *suadente diabolo*, they broke out against discipline, they beat officers, ran away "piratically" with the ship's boats, cut the breechings and tackles of great guns on the main-deck in gales, or, rising to altitudes of disorder, mutinied in the *Hermione*, the *Marie Antoinette*, and the *Danae*, with or without murder. Tradition dies hard among sailors. The old tendency to mutiny did not disappear till the beginning of the present generation.

CHAPTER V

MURDER

When we find that, between 1755 and 1778, more than fifty Courts Martial were held in the Navy on men accused of murder, at the rate, that is to say, of just over two a year, it is but natural that we should be shocked. Nevertheless it is the fact that "The Index and Compilation" of Courts Martial from 1755 to 1805 register that number of murder trials in those years. After 1778, the cases become rarer, though they do not cease to be painfully frequent. At the very end of this period we find the trial of a lieutenant, who had killed a brother officer at the mess table by stabbing him with a table knife.

An examination of the items in the list tends to weaken the impression which the bare figures create. Among the cases tried in 1757 is that of James Abadham, master of the sloop *Wolfe*, who, while chasing, in one of her boats, some deserters who had seized another, killed one of his own crew. The deserters were leading ahead, and seemed likely to escape. One of the master's own boat's crew called to him to send a shot after the runaways and stop them. He stood up and pointed a musket at them, and hailed them to stop. As he spoke his boat touched the ground and heeled over.

The shock deflected the master's musket, and caused him to press the trigger. The musket went off and shot his own bowman dead. In this case there was manifestly no murder, though there was perhaps some rashness, or even carelessness. As the master must have fired over the heads of his boat's crew, and from a very unstable platform, he perhaps took an improper risk. But he was entitled to fire on the deserters, and he committed no murder, either "contrived" or "constructive."

If it was lawful to fire at a deserter, or an escaping prisoner of war, that would only be the case when there was a contumacious refusal to obey the summons to return. The killing might be in circumstances which deprived it of all excuse. In 1801 a case occurred at Port Royal, Jamaica, which aroused the indignation of the island and the squadron. Lieutenant Crosby, who commanded the prison ship *Admiral de Vries*, had given orders that all prisoners who attempted to escape were to be fired at. On the 30th March, fifteen prisoners made a push for liberty by hiding themselves in empty water casks, which were going ashore to be refilled. Crosby was not at that time in the ship, but the master, Fenwick, considered himself bound to carry out the lieutenant's orders to the letter. By his command the marines fired into the casks, and the prisoners were butchered in them, with the exception of one who contrived to jump into the water and was there shot. A coroner's jury was summoned. It found that Mr Fenwick had given the orders, but that he was himself acting by the orders of Lieutenant Crosby. The master did not profess to think that there had been any necessity to fire for the purpose of preventing the

escape of the prisoners. Neither did he conceal his own disgust with what he had considered himself bound to do. His excuse was that he was afraid of Lieutenant Crosby, who had, shortly before, visited his displeasure on one of his subordinates who had not been prompt enough to kill an escaping prisoner. Crosby was no doubt responsible for the safe keeping of the prisoners, but the methods he had caused to be adopted were disgusting to the community. As the runaways could hide only in a British possession, to which no foreign ships were allowed to come, there was no possibility of their final escape. In fact, at a time when merchant ships were often half, or more than half, unmanned in the tropics, and when, as in all times of war, the restrictions imposed by the Navigation Laws on the employment of foreigners were suspended, the runaways would find many merchants and skippers ready to make use of them. Perhaps that helps to account for the general indignation felt at the brutality of Lieutenant Crosby.

That feeling was fully shared by the Navy for other reasons. Officers and men alike knew that they were never quite safe against capture in war themselves. Enlightened self-interest, even if no other sentiment influenced them, was enough to make martial men understand that there must be a certain moderation in the use of victory. The full exercise of the rights of war is apt to provoke retaliation. And we may credit Crosby's brother seamen with sufficient humanity to feel a disinterested detestation of his ferocity. He was brought to Court Martial and dismissed on the 16th April at Port Royal. His was a very exceptional case.

An examination of the list of murders shows a painfully large number of cases in which death was caused by some summary act of rough carelessness. In 1762, J. Thickpenny was tried at Gibraltar for the murder of a messmate, John Hazlewood. Hazlewood had come aboard drunk, and had thrown himself into a hammock. He was too helpless to get into it properly, and so lay lolling with his legs hanging outside. They obstructed Thickpenny who, to clear him out of the way, tried to cut the hammock down with an adze. He missed the rope and wounded Hazlewood mortally in the head. It was the act of a clumsy brute, and morally was but little removed from murder, but there was no reason to suppose that Thickpenny meant to kill the man. On that ground he was acquitted by the Court Martial.

At the same place, and in the year 1779, there occurred a case of killing in sheer wanton carelessness which was far worse than Thickpenny's. The slayer was Captain Stairs Douglas of the marines of H.M.S. *Montreal*, and the victim was one of the midshipmen of the ship. He and another middy were amusing themselves alongside in a small boat. For fun they hoisted a white handkerchief on a stick at the stern of the boat. The flag of the French Royal Navy was white. The lads were making believe to be a French man-of-war. Captain Douglas who was watching them from the deck began to exchange chaff with them, and at last cried out "I'll bring your flag down." He took a ship's pistol, loaded it, and fired it thrice at the handkerchief. The result was precisely what a moment's thought must have convinced Captain Douglas it might very well be. He missed his

mark, and shot the midshipman dead. His action was unpardonable. To fire a loaded pistol into a harbour which was being crossed by boats was such a piece of pure folly as would hardly have been excusable in a small boy, who had a firearm in his hand for the first time, and was tingling to hear it bang. The Court acquitted him because he had no intention of killing. The official who prepared the Index and Compilation wrote on the margin of his summary of the case that he knew Captain Douglas, and knew how greatly he had been grieved by the consequence of his folly. He was particularly friendly with the lad he shot. Let us hope for his own honour that Captain Douglas never did forgive himself for a deed which, if not as wicked as a deliberate crime, was quite as disgraceful to an honest man.

The fact that both Thickpenny and Captain Douglas were simply acquitted is in itself significant. Naval Courts Martial of the eighteenth century appear, as far as I can discover, rarely to have understood that killing which falls short of murder may yet be manslaughter, and deserving of punishment. They at least acted as if they had no choice between condemning for murder and acquitting. It is not necessary to have been bred an attorney in order to see the distinctions between the cases of Abadham, Thickpenny and Captain Douglas. The master had a right to fire, and was even bound to do so, if he had no other way of arresting the deserters and recovering the boat they had stolen. It was by accident that he killed the bowman in his own boat, and though he may have been somewhat rash, his guilt was small and excusable. He ought, it may be, to have turned his own boat before he pointed the

musket so that his shot must in any case have gone clear of his own crew. Thickpenny was unquestionably guilty of manslaughter. He had no right to cut the hammock down, and such an instrument as an adze was a most dangerous one to use. Still, even in his case, there is the excuse that this rather brutal act of cutting down hammocks was common, and was by custom held to be justified when the occupant would not turn out, or was creating a nuisance. When Captain Douglas fired recklessly at the make believe French flag, he was doing what he was bound to know was inexcusable, and he was guilty of manslaughter in a high degree. He was of an age and position to know the danger of what he was doing and was to be held responsible for the easily foreseen, and very possible, consequences of his acts. Yet the Courts Martial made no distinction between the three cases. This lack of discrimination could not but have a tendency to promote recklessness. If men knew that they would be acquitted for killing unless it could be shown that they had slain maliciously and deliberately with intent to despatch a particular person, they would assuredly be the less likely to take care.

And Courts Martial could fail in another way. Not only did they think that a killing must be either fully murder or blameless, but they were capable of showing themselves ignorant of what all the world might be expected to know—namely, that a man might be a murderer when he acted with murderers, even though he could not be shown to have put his own hand on the victim. Strange as it may appear that Englishmen of any class should not understand as much, and stranger still that men who, when living ashore, were

often justices of the peace, should be so ignorant, we can see from the case now to be quoted that they were.

In 1778 a murder case had come before a Court Martial held on the *Britannia* at Portsmouth, on the 14th December. The murdered man was one Matthew Cavanagh, an old Irish sailor, described as "very quiet and innocent." The accused were David Caynes, a boatswain's mate, and Edmond Butler, seaman. All three were serving in the *Worcester*. The story is very sordid, but it does more than tell us that two brutal ruffians were to be found among the thousands of men composing the crews of the Navy in the first year of the War of American Independence. It has something to teach us as to the discipline of the Navy at that time, and by its light we see ugly things.

The question how far the crews of the old Navy were composed of Irishmen has been debated with much loose assertion, and not a little equally loose contradiction. The *Worcester* was undeniably full of Irishmen. We hear of several cases in which they spoke to one another in Erse. One of the witnesses, who was borne on the ship's books as James Collins (doubtless a "Purser's name" imposed on him and not the real one), asserted that he could speak no English and an interpreter, "Jordan Roach, Gent," was employed to translate the Court's questions, and his answers. It is not unusual for witnesses to profess ignorance in such cases, in order to secure time to think over their answers. Yet if Collins could speak English, the fact could hardly have failed to become known to his officers and mess-mates, during the months in which he had served in the *Worcester*.

Matthew Cavanagh, having received some money

as pay or bounty, wished to send four pounds to his family in Ireland. He applied to his fellow seaman and Irishman, Edmond Butler, to forward the money for him—from which fact we see that there was no generally known way by which he could make the remittance through the purser. Butler took the four pounds and spent them partly on clothes, and partly on drink, for himself. Cavanagh learnt that his four pounds had not been received. When he expostulated, he got only evasive answers, or rigmarole stories of some mysterious person who owed Butler money, and by rights ought to have paid Cavanagh's daughter. The old man's grievance was notorious on the lower deck, but Butler relied on terrorizing him. He had the help of the boatswain's mate, David Caynes, who appears as the bully of the lower deck. He carried a knife which he was very ready to produce *in terrorem*. He was in the habit of sticking it in the deck, and looking significantly at such of his messmates as he wished to cow.

Butler's plot would probably have succeeded, for it was abundantly proved that Cavanagh went in terror of Caynes, if some of the crew, who had too much spirit to yield to the bully, had not told the officers. The parties were summoned to the quarter-deck, and inquiry into the case showed that Cavanagh's story was true, and Butler was forced to make an assignment of four pounds of the pay due to himself as repayment of the old man's four pounds. This intervention only increased the terrors of Cavanagh. He made no secret of his fear that Butler and Caynes would murder him. But the officers to whom he appealed told him he was a foolish man, and had no cause to fear. When the

crew was mustered on Sunday the 2nd February, Cavanagh could not be found in the ship. Jeremiah Dempsey, another Irish sailor, will tell why he did not answer to his name. The reader is asked to accept, without further words, two statements of fact—one that the headrail of the *Worcester* had been shattered in bad weather, the other that Dempsey had a valid excuse for being at the ship's head in the middle watch*.

"I heard a great noise on the outside. It startled me at that time of night. I started up, and heard the head door open. I got up and looked through the hole in the Round House the glass of which was broke, and looking out I saw David Caynes had hold of Matthew Cavanagh, somewhere about the breast, and heave him down feet foremost through the gratings of the head into the sea. I heard him fall into the water. I jumped up and went to my hammock. The next day which was Sunday we had prayers. After they were over Captain Robinson ordered all the people Men and Boys to walk in at one side of the Cabin and out on the other for a muster. After being called being ill I came down to my berth, and Cavanagh being called late upon the books, and his name being called 'call that damn rascal' says Caynes, says I 'David why need you call him, you know best where he is.' On this he put his hand in his pocket, and drew his knife out, and said, putting his thumb on the open blade of the knife 'If I hear any more of that this shall be your portion.' I did not know what to be [*sic*] being afraid of my life, and I thought it better to keep it to myself till I could go ashore to Admiral Pye's House, and acquaint him with it. After we came home from the cruise, we had no liberty of going ashore. This secret pricked my conscience and therefore I told Cotter which way the man was lost, he talked of it, and Ned Norton heard of it. I was called on the Quarterdeck and examined—Mr Dunn had the watch."

The first comment to be made on this story is that the Court believed it, for they found Caynes guilty and sentenced him to be hanged. Their belief is evidence of more than their reliance on the truth of Dempsey's testimony. And why was Butler tried? Because he was

* The headrails enclosed that projecting space of a wooden sailing ship which came between the figure-head and the forecastle, with which it communicated by the head door.

seen by another sailor then on the forecastle to be standing close by Caynes when Cavanagh was thrown into the sea. We have it on the best testimony available at any time—namely his own confession to the Court—that he was there. He too said that Cavanagh was hurled overboard by Caynes. He accounted for his presence by saying that he had gone to the head to wash clothes in the middle watch, and he excused his own silence by alleging that the murderer terrorized him, dragged him to the lower deck holding a knife to his breast. The Court Martial, the egregious and unspeakable Court Martial, acquitted Butler, because he had not been seen to touch Cavanagh!

It is impossible to doubt that Cavanagh was murdered, and we can well agree with the witnesses who thought that he had been stabbed before he was dragged through the head door, for he uttered no cry and made no struggle. I am far from thinking that the proceedings of the Court Martial give the whole truth of this story. All these confabulations in Erse, the long time, from February to November, which passed between the date of the murder, and the revelation of the crime to Lieutenant Dunn, the nationality of the victim, the criminals, and the witnesses, suggest something behind what we can see, some tale of Irish feud and murder. There are other questions which press for an answer. Whatever may be obscure, certain it is that Cavanagh did not answer to his name on the 2nd February: that as the ship was at sea he could not have deserted, and that he was known to have a quarrel with Butler, and to be in fear of him and of Caynes. Yet Captain Robinson did not think it necessary to make an inquiry into the disappearance

of the man. If the prisoners had been sent before the "Civil Magistrate" to be tried by a "Red Judge," and the prosecution had been conducted by trained lawyers, we might have more light on these points. It is quite certain that a competent Court would never have made the astounding distinction between the degrees of criminality of Butler and Caynes which was made by Admiral Mark Milbanke and the twelve captains who sat on the Court Martial. The decision of a Court Martial, as we ought never to forget, is by vote of a majority, but is given as by the whole Court, and the members are bound never to reveal what passed among themselves. Of the thirteen gentlemen who met in the *Britannia's* cabin, six may have been intelligent, and seven may have been both ignorant and obtuse. The six would be swallowed by the seven, and so stand as members of a criminal court so ignorant of what it was its duty to know, as not to be aware that the man who instigates, and by his presence aids, a murder, is as much a murderer as the agent who strikes the blow.

Ill qualified as Admiral Milbanke and the twelve captains who sat with him unquestionably were to discharge the duties of criminal judges, they must be accepted as competent authorities as to what might, or might not, be expected to happen in a man-of-war. Let us see what they thought credible. They heard and believed that Butler could commit a very mean theft, and not be tried for it; that instead of sending him to justice, the officers of the *Worcester* exerted themselves to compound a felony, for by allowing Butler to escape a Court Martial for theft by making an assignment of his wages, this is what they were doing; that

a sailor could terrorize his messmates with a knife, and nothing said ; that another sailor could complain with at any rate some appearance of reason that his life was threatened, and no question asked ; that he could be despatched below, dragged to the head door with a great noise, and thrown into the sea with a loud splash ; that there should be no officer on the forecastle to hear and inquire ; that a man who, to the knowledge of the officers, had professed to be in fear of his life from the threats of known persons, should be missing at muster in suspicious circumstances ; that of two things one must be true, either that the captain was not told that he was not present ; or that, being told, he did not think it necessary to make an inquiry. They heard all this and more to show that there was terror and crime on the *Worcester's* lower deck. They expressed no surprise that Dempsey did not think it safe to tell the officers what he knew. And they came to their imbecile decision.

That Cavanagh was murdered there can be no doubt. Caynes made no defence. He simply accused everybody of lying. He called a witness, William Patrick a sailor, to speak for him. Patrick told the Court that Caynes had endeavoured by offering him an outfit of new clothes "stockings, breeches and canvas for trousers," to suborn him to swear that when the murder was committed they were drinking together—in the middle watch and in a ship at sea ! This fellow said Caynes "would swear the print out of the Bible." He must have thought that this story of the drinking in the middle watch would appear credible. Dull brute as the wretch plainly was, he would not have invented an excuse which he knew would sound incredible, and

if William Patrick was swearing "the print out of the Bible" he too must have sworn what he thought might be believed.

I do not think that we know, or ever can know, the whole truth as to the murder of Matthew Cavanagh, but two things are convincingly proved by what we do know. One is that a naval Court Martial of the year 1778 could show a quite childish incapacity to fulfil the function of a criminal court. The other is that, in this year, a British man-of-war might be not only slovenly in discipline, but be in point of law and order a "regular built privateer," and not very much raised above the level of a pirate.

To what astounding lengths of pedantry a naval Court Martial could go can be seen from two cases which occurred very close to one another in time, though not in place. In January, 1776, a Court Martial in Portsmouth acquitted P. Digman, a marine of the *Arethusa*, for killing a brother marine, John Twigger. These two men were friends. It happened one day, when Digman was lying in his hammock, that Twigger came up and began horseplay with him. Digman struck at him with a knife and stabbed him. The wounded man cried out "Now you young rascal you have giggered me," and then fell down and died. The Court acquitted Digman on the ground that he had not shown "malice." In the following year one Cox, a marine of the *Cygnets*, being on duty as sentry at English Harbour, Antigua, saw an old sailor, Thomas Saunders by name, go past him. It is not said that Saunders spoke to the marine, or molested him in any way. But Cox abused him as "a wranglesome old fellow," and the sailor struck him. Thereupon Cox drew his

bayonet and stabbed him to death. The Court Martial acquitted him because he had been attacked while on duty !

Pedantry, the pedantry of the uninstructed man set to do work for which he is ill-prepared, who, as all experience shows, is addicted to seizing on some formula and adhering to the letter, can alone explain such decisions as these. The phrase, " malice aforethought," was just the kind of sonorous formula which would be easily and firmly embedded in ill-prepared heads. Murder was killing with malice aforethought. The prisoner had killed, but had not shown the needful quality of malice. Therefore there was nothing for it but to acquit him. And here too the explanation is an excuse. Though the Admiralty provided Court Martial with a Code, it took no effectual means to expound the principles on which that Code ought to be administered. It would have been well within the power of the Admiralty, at any time after the passing of the 13th Charles II, to employ some competent lawyer to compose a text book for the use of Courts Martial. There was no need to go so high as to Hale or Holt, Somers, or Lord Mansfield, in the days when he was still only Mr Murray. The treatise need not have been longer than Sir James Fitzjames Stephen's Indian Evidence Code, and need not have equalled that master-piece of lucidity in order to be sufficient. But no real help was given to Court Martial from above. It was left to grope its way with such help as it could obtain from that knowledge of the law which every Englishman is supposed to possess by nature, and from the guidance given it by the Deputy Judge Advocate, who in earlier days was sometimes a chaplain, and in

later times was always the purser, who acted as admiral's secretary. It is not wonderful that the Court should sometimes have shown the pedantry of insufficient knowledge.

Where the case was clear, Naval Court Martial was not lax. It had for instance no hesitation in sending to a richly deserved halter at the yardarm, Andrew Richardson, seaman of the *Yarmouth*, in 1760, at Sheerness. A more callous brute than Andrew Richardson can never have defiled the face of the land or sea. The secretary's clerk of the *Yarmouth* owned a case of spirits, and had no safe chest in which to lock it up. He was accustomed to leave it under the watch of a boy. Richardson, who knew where the case was to be found, and was resolved to steal the liquor, came, and found a negro boy of ten lying on the top, by the secretary's order. The child could speak only a few words of English, and had probably been taken out of a captured French slaver. He was employed to carry parcels, and wait at table. Richardson seized the unhappy little wretch by one hand under the chin and at the back of the head with the other. The child screamed, and the ruffian broke his neck with a wrench, and "with the utmost unconcern" tossed his corpse overboard. The beastly action was done in the presence of some of the white ship's boys. The Court Martial before which he came sent him to the yardarm. That he was a dim-minded brute, that to him it seemed quite natural to clear the way for a theft of alcohol by suppressing a helpless negro boy, that he would probably have been perfectly incapable of being made to understand that he had sinned bestially, did not appear to the common sense of the age any reason for

considering him as a fit object for pity. When he died the world was doubtless cleansed of a scoundrel who had committed a score of crimes, and had escaped detection by the incapable police of the time.

The reports of Courts Martial show many other such creatures as this—men who were in the Navy because they were criminals and who were intellectually and morally noxious wild animals. In 1770, three men of H.M.S. *Montreal* at Gibraltar, sat down to supper. They had an earthenware dish before them holding broth and bread. “The first man who disturbs this, I’ll do for him,” said Bruin. His messmate, William Smith, who was not minded to be hectored, put his hand in the dish and pushed the bread saying, “this is disturbing of it, is it not?” To Bruin nothing appeared more natural than to stab Smith. He did, and death followed. To the Court Martial nothing seemed more natural than to send Bruin to be hanged, and it did.

We are accustomed to think of the use of the knife as peculiarly un-English, and the sailor as peculiarly English. Yet, as I have already shown, stabbing was nearly as common in the British Navy as it can have been among the “Degos,” to whom it is supposed to be appropriate. It would be easy to prolong the list of such cases as this over many pages. But once more I can only say that the reports of Courts Martial are open to all who may consider my citations to be excessive or unfair.

Ruffians of this stamp would of course not hesitate to kill when the life of man stood between them and freedom. The deserter, whose escape was barred by an officer, had a strong motive for putting him out of the way. One instance may be quoted as an example.

In December, 1745, the *Dorsetshire*, in the West Indies, lost several men by desertion. They seized the guard boat, by night, and fled with her. The boat was commanded by a midshipman, David Robinson by name. What happened in her we do not know, but Captain Toll of the *Dorsetshire*, and his clerk, who were on deck, heard the voice of the midshipman crying in the dark "O Lord, you will drown me." The guard boat disappeared, and when the ship's company was mustered at daylight, her crew and some men who did not properly belong to her, did not answer to their names. Among the missing men was one William Abbot. Some months later Captain Toll was informed that Abbot was on board the *Lyme*. He had been found in some port and pressed. Captain Toll caused the man to be arrested and he was brought before a Court Martial sitting on the *Suffolk* at St John's Road, Antigua, on the 5th April, 1746. The man appears not even to have attempted a defence to the charge of desertion, and of having been concerned in the murder of Mr Robinson. The Court showed an almost minute anxiety to be judicial. It did not affirm its belief that Abbot had a share in the murder of the midshipman, because the circumstances were obscure, and because it was not proved to a certainty that Abbot did get away in the guard boat. It could afford to practise reserve because there was no doubt whatever that Abbot had deserted. He was condemned to be hanged for the offence he had undoubtedly committed, but we may feel reasonably sure that he would only have been flogged if the Court had not been convinced that he was not only a deserter, but also a murderer.

The differences which rank and education make

among men are but skin deep. In the Navy of the eighteenth century the way from the fore-castle to the quarter-deck was open. Even for the officers who belonged to the corps from the first, in so far at least as they were counted gentlemen of the quarter-deck, life at sea began young and little education had been received. Excess in drink was too common and we need not be surprised to find that even in the wardroom there were some who were prompt to stab.

Here is a scene we can look at through the eyes of one who was present—Lieutenant James Jardine, of the marines of H.M.S. *Samson*. He spoke at a Court Martial held on board that vessel at the Hamoaze, on the 23rd August, 1785. The prisoner was Mr Blow, the *Samson's* first lieutenant, and the charge against him was that, in the small hours of the 10th August, he had not so used his authority as to avert the murder of the master, Mr James Walton, by Captain Douglas of the marines.

On the evening of the 9th several officers of the 70th Foot had dined with the officers of the wardroom. They tarried late by the grog—and now Lieutenant Jardine can take up the tale.

“Lieutenant Burnell of the 70th Regiment invited Mr Walton the deceased, and me to dine with him on the next day. Mr Walton and myself accepted the invitation. A short time after that Mr Burnell seemed to be very much displeased with the company, in general. It proceeded I believe from drinking too much grog. Lieutenant Burnell repeated his invitation a second time to Mr Walton and me, and from his being displeased with the company and for what he could not tell*, Mr Walton the deceased declined the invitation. When Lieutenant Burnell found he had done so, he got up from his seat and addressed himself to the company and requested to know if he had offended any

* Lieutenant Burnell was “displeased,” and Lieutenant Jardine “could not tell.” The clerk who took the report knew, and did not think it necessary to summon grammar to the aid of the reader.

one of them. He said if he had offended any one of them he would give them satisfaction in the morning. With that the company in general said he had not. Upon that he requested to shake hands with them all round which they did. He addressed Mr Walton a third time hoping to have the honour of his company to dine with him, which Mr Walton still declined, and told him he would give him his reasons in the morning. Captain Douglas seemed to be very much displeased with Mr Walton for declining to dine with Lieutenant Burnell, Mr Walton told Captain Douglas he could not conceive he had any right to take part in the affair; that he would give Mr Burnell very good reasons in the morning. Captain Douglas still seemed to be displeased, and very much disposed to quarrel with Mr Walton. I got up and addressed myself to Captain Douglas and told him I thought he used Mr Walton extremely ill, and told him that I was certain Mr Walton would give him any satisfaction in the morning, that he could wish on account of his declining to dine with Mr Burnell. He paid very little attention to my words. Lieutenant Blow during that time did everything that lay in his power to prevent the dispute from going further by telling them to drink a little grog and be good friends."

Lieutenant Jardine, who appears to have been the only man in the company who had remained sober, now told them that they had better go to bed, and then left the wardroom. The exact details of what followed we cannot learn from the report of fuddled witnesses, but, after more wrangle and repetition, Mr Walton called Captain Douglas "puppy," and boxed his ears. When the Baron of Bradwardine and his guests grew drunk and quarrelsome at the tavern of Luckie Macleary it all ended in a duel in correct form. Romance is free to preserve the gentlemanly decencies. From the plain language used to the Court Martial on the *Samson*, we learn that there was no "satisfaction in the morning." The common brute overpowered the gentleman. Captain Douglas rushed to a cabin, seized a bayonet and, though two of the company strove as well as tipsy men might to restrain him, stabbed the unarmed Mr Walton twice and killed him. So effectual was the practice of

duelling in restraining men from vulgar brutality. The sight of the murder he had committed shocked Captain Douglas into a ghastly sobriety. The officer and gentleman saw that he had made himself a common and drunken stabber. He rushed on deck and jumped madly overboard. The watch dragged him out of the water*.

The Court Martial could not be persuaded that Mr Blow, who endeavoured to abate a drunken quarrel by urging the parties to take a little more of the grog, of which they had taken too much already, had in fact done all he could to avert the sordid tragedy. He was dismissed his ship.

The reports of Courts Martial would supply further examples. But it is not necessary to dwell on an unpleasant subject. We cannot ignore it if we mean to tell the story of the old Navy honestly. To labour it would be to exaggerate and convey a false impression. Enough is done when we note that there were these brutal natures and brutal acts in the old Navy—which, none the less, was the most effective of all the instruments in the hand of the state for the creation of the Empire.

* I find no record of any Court Martial on Captain Douglas, and presume that he was handed over to "the civil magistrate." His further fortunes have therefore no connection with Naval Court Martial, and I have not thought it incumbent on me to follow them.

CHAPTER VI

IN ACTION AND SHIPWRECK

It is refreshing to put away those records of Courts Martial which necessarily show us the disorders, crimes and oppressions of the Navy, and to turn to the others in which we can see it in battle and storm. In them also we meet with cases of failure and misconduct. But we can see much else, of a very different character, and in them the good far exceeds the bad. I shall deliberately look rather to this, the more pleasant, side. As I have already said, it is not my purpose to discuss again those battles which, like Keppel's engagement with D'Orvilliers off Ushant, Mathews' encounter with the French and Spaniards near Toulon, or Byng's miserable engagement with La Galissonnière near Minorca, have become notorious. The only battle I propose to tell from the Court Martial records is that fought in 1758, in the Bay of Bengal, by Pocock. It was obscure and unimportant in its consequences, but it was none the less instructive and curiously rich in displays of personal character. Of single ship actions I shall prefer those which show in what conditions the work of the old Navy was done.

No part of that work is more obscure to us than the share of the fireship. It is gone and for ever, but the



A Revenue Cutter

name is familiar, and the memory of certain occasions on which it was used with tremendous effect is still fresh. The total destruction of the Earl of Sandwich's flagship in the battle of Solebay in 1672, gives us cause to remember one occasion on which it was employed with signal effect against ourselves. The attack on the French squadron in the Basque Roads in 1809, when the terror of fire gave us victory, the vengeance taken by the insurgent Greeks on the Turks for the massacre at Chio, are modern instances. When it succeeded, the fireship proved as fully, though not as instantly, destructive as the modern torpedo and floating mine. If it did not play a yet greater part in naval history, the reason must be sought in the fact that its power was subject to two strict limitations. It could hope for success only when wind and current were in its favour, and when the enemy was either unable to move, or could move but very slowly. And then the crew was in the torpedo, not in the vessel which launched the torpedo. The ship itself was the missile, and the use of it called for a combination of skill, coolness and devotion above the average of courageous human nature.

Here is a case in which the weakness of the fireship was shown, told in the words of Captain Wooden of the *Blaze*. They tell their tale so clearly as to need no comment, and are preserved in the sworn deposition he laid before a Court Martial held on board the *Albemarle* at Blackstakes, on the 3rd September, 1697. Sir Stafford Fairborne was president of the Court.

"May the 5th 1697 at 4 in morning having little wind at S.W standing to the Southward, we being about half a mile to windward of the commodore and the body of the fleet [*i.e.* the 'flota' or trading

ships to which the warships were giving convoy] about 4 miles to leeward of him with the *Chatham* on their lee quarter, the *Seaford* to leeward of us near the Commodore. Then we saw four sail of ships standing towards us which we took to be the enemy's. The Commodore bore up round towards the fleet, and made the signal for the line of battle, and made sail setting his mainsail and top gallant sails, and we did the same. But sailing very heavy we fell astern, and he left both me and the *Seaford* for a prey to the enemy. But in my weak opinion (as the French themselves have also owned not only to me but to several other commanders that were taken at that time) that had the commodore stayed for myself and the *Seaford* and had suffered us to keep near him, they had not attacked him. But he might have joined the fleet with us... But he leaving us, the two biggest [French] ships past me without firing at me and followed the *Seaford*. In the meantime I had got out my boats, and sent my biggest one on board a merchantman that was nearest to me with 22 of my men. Then I had 21 more on board. But the Commander [of the merchantman] kept them from coming on board him for near half an hour having his men armed with muskets and threatened to fire at them pretending that they were enemies which hindered my boat from returning so soon as I expected, and gave the other two smallest of the enemy's ships time to come up within half musket shot of me, one on my starboard, and the other on my larboard quarter, they firing great and small shot very hot at me, and I round and partridge at them as fast as I could, in hopes to divert them till my boat returned that I might carry off the remaining part of my men, and burn the ship, but they seeing my boat coming, sent 3 of their boats towards me and intercepted my boat. Then I received a musket shot through the upper part of my thigh. Notwithstanding I fired two muskets after. But not being able to stand any longer, and seeing no possibility of escaping or burning my ship without burning myself or [and] part of my men that were left, for my small boat would not carry more than half those I had on board I was then forced to surrender to the enemy. And had the commodore sent one of his boats to me at the first as is usual in such a cause [case] his boat and mine had carried off all my men and I had burnt the ship."

Here the fireship was taken where there was no chance of using her, and where she could not be fired, even for the purpose of preventing her from falling into the hands of an enemy, without devoting the whole, or a great part, of her crew to death uselessly. The object for which she was fitted made it necessary that she should be small, should carry few guns, and be

worked by a crew of moderate numbers. Apart from her capacity to destroy an enemy, together with herself, the fireship was but a weak weapon. She could only fulfil her function in the way shown in this report made by Captain George Palmer of the *Vulcan*.

"Being at single anchor in H.M. fireship *Vulcan* on the 20th September 1781 in York River Virginia—the mouth of the river being blocked up by two French line of battle ships and a frigate, I solicited Captain Symonds of H.M. ship *Charon*, and Senior officer to permit me to make an effort at night to attempt the destruction of them, by making use of H.M. ship I commanded.

On the 22nd at night I received an order to proceed in company with four vessels fitted out for the above purpose, and at twelve that night after seeing all the small vessels under weigh before I slipped [viz. my cable] in H.M. ship under my command, and then put every person out of the ship except the Lieutenant, the Gunner, the Boatswain, and four seamen who were volunteers with me on the expedition, and proceeded on until I saw the French line of battle ships at anchor, with their broadsides towards me, and on my not seeing the small vessels at that time, I brought to to wait for them, and to my great surprize soon after I saw them all four on fire about three miles astern of me. As the alarm was now given I directly made sail and stood for the enemy. The people on the fireship's forecastle called aft that the French men of war were hailing, and soon after that they cut their cables and we saw them making sail with vast noise and confusion. I soon became close to the quarter of one of them, and pushed to grapple her, my people ran to the boat and left me at the wheel steering, the people calling out that a French boat was close to our bows, and at this time the French ship began to fire through and through us, and had made sail, I saw no other view than that if I didn't get out of the way I should presently be either burnt or taken. Accordingly I set fire to her about 3 o'clock of the morning of the 23rd, and the French ships ran ashore as did the *Vulcan* close to them."

The captain of the *Vulcan* was borne out by his lieutenant, Charleston, whose unusual Christian name was Diderick (Dietrich, or Derrek, or Dirk = Theoderick, Anglicised). They add a few details. The captain was not, as his own words may seem to imply, deserted by his crew. They got into the boat by his orders. The witnesses also assert that, though the *Vulcan's*

attempt to grapple the French line of battle ship failed for the reason he gives, she none the less passed so close to the stern as to carry away the "driver boom*."

Here we see the fireship at work with some measure of success, in a way which illustrates the method of its working, and the dangers which attended its operations. The attack was to be a surprise, effected by help of wind and current. It was desperately perilous to the men who were to execute it. Work for the volunteer, the forlorn hope, the *enfants perdus*. The captain must himself take the helm, and stand to his post till the deck is blazing under his feet. If he is not sunk, seized by a guard boat, and turned aside, if the enemy on whom he steers cannot avoid him smartly, he may work utter destruction. If the terror he inspires and local circumstances combine to throw the ship he is attacking into some other danger of collision or stranding, he inflicts heavy damage even though he fails to destroy. But the odds are long against the fireship, and only the most dauntless resolution will nerve men to push on, and delay setting her on fire till she can produce her full effect, which will not be till they themselves are in extreme peril. Therefore the temptation to fire her too soon and escape is great ; and, as in the case of the small vessels which accompanied the *Vulcan*, it is one to which human weakness is apt to succumb. The Court Martial which tried Captain Palmer and his officers at Portsmouth on board the *Warspite*, on the 15th June, 1782, acquitted them honourably of all

* The spanker boom of a ship of that time extended only to the taffrail. But spars of the same character as the studding-sail booms of the yards were fitted to both spanker boom and gaff. They could be run out and a strip of canvas, called a driver, could be set on them as an addition to the spanker.

suspicion that they had lost the *Vulcan* by any lack of skill or resolution. They had used her for her proper purpose which could only be achieved by her destruction.

The operations of naval war were subject before and during the period covered by this book to a form of danger from which they would now be in a very great measure free. These were the dangers of navigation on the uncharted, or ill-charted, and little known coasts. The navigating officers of the British Navy to-day are held to be able to navigate on any coast, to enter and leave all ports without the aid of a pilot. No such competence was, or could reasonably be, expected from the sailing masters of the old Navy. The modern navigating officer has the means of learning what are the dangers he must avoid, and where he can find the safe passages. It is even more in his favour that he handles a ship which can triumph over wind and current.

Very different was the position of the captains and sailing masters of the days of the wooden sailing ship. Charts are of ancient use. The middle ages had them. Sailing directions, "periploi" and "portulani," were drawn up in antiquity and medieval times. But neither were worked out with the minuteness of the modern seaman's guides. When commerce and maritime war spread all over the globe with headlong speed in the age of the great discoveries, the sailor roamed far beyond the knowledge of the pilot. Even if the effort had been made, the tracts of ocean, and the lengths of coast to be surveyed, were so vast that no effort could have overtaken the work. And the effort was not made, or not made beyond the proved ocean routes, and on them but roughly. It was even deliberately suppressed, in the sense that the knowledge

gained by one people was kept secret from others. The old colonial system, by which the commerce of all colonies was reserved as a monopoly by the mother country, tended to favour secretion of knowledge. No nation owning colonies wished to facilitate the enterprises of the smuggler, the interloper, the invader. Thus, while even the most frequented waters of Europe were still but loosely charted, the seas of America and Asia were not charted at all in most parts. The necessary knowledge was in all much confined to the local pilot, and in many seas was possessed by him alone. Therefore the man-of-war was nowhere able to dispense with his aid, and least of all when cruising in distant seas and on hostile coasts. And when there was no pilot, or he was an enemy, that aid was not available.

When these conditions are borne in mind we can understand why H.M.S. *Raisnable* was pardonably lost on the coast of Martinique, in 1762, in circumstances which would now be thought scandalous. She was taking part in the capture of the island, and was selected by Commodore Douglas, who was in immediate command, to lead the attack on the French batteries by Pointe Jardin. Captain Shuldhham, when he received his orders, told the Commodore that as neither he, nor any of his officers, had been in those waters before, it would be a good thing if he could be provided with a pilot. Douglas replied that he had one—Mr John Panmure—who had joined him from Antigua, bringing strong letters of recommendation. Panmure had sailed the West Indies for forty years, and was universally regarded as a most trustworthy man, and competent pilot—the best indeed that there was. He could not be suspected to be a hungry pretender who was prepared

to undertake more than he could perform for the sake of the pilotage fees. He had prospered as a trading skipper, and was in "easy circumstances." He had resigned the command of a merchant ship in order "to serve his King and Country" by offering the use of his local knowledge, gained in many trading voyages, and no doubt many smuggling ventures, on the Spanish Main and among the French islands. Douglas and Shuldham might well have reflected that Panmure's probity and patriotism, and the kind of experience he had gathered, did not necessarily qualify him to pilot a line of battle ship into foul waters. He had passed his life in the small trading craft of the West Indies, sloops, or schooners, drawing ten or twelve feet. For them and for their work, he was no doubt a good seaman and a good pilot. His weakness was like to be that he would think in terms of such vessels, and might prove to be a positive danger when acting as pilot in any warship larger than a small gun brig.

Captain Shuldham would indeed have done better to trust his own eyesight and judgment, and so he was to learn before the 7th January was over. The *Raisable* led in piloted by Panmure. As she neared the station she was to take up for the attack on the batteries, Shuldham noted the colour, or rather the lack of colour, the whiteness, of the water ahead, and rightly judged that it must be shallow. He asked Panmure whether he was sure he could take the *Raisable* safely to her station. The man answered that he was. But the captain's faith was, by now, shaken. He ordered the lead to be cast, and it showed four fathoms, that is to say about the minimum of water required to float his ship. He at once gave orders to alter the course, but

before they could be carried out the *Raisnable* struck heavily on a shoal. Every effort was made to lighten her and haul her off without success.

The Court Martial which sat on board the *Dublin* in Cas Navire Bay, on the 23rd January, had before it the captain and officers of the *Raisnable*, and the pilot, who, as being for the time in the pay and service of the King, was subject to its jurisdiction. Panmure's defence of himself leaves an impression of his transparent honesty. He made it perfectly clear that with all his long experience, easy circumstances, good character, patriotic sentiments, and loyalty, he was perfectly incompetent to perform the work he had undertaken. On his own showing he had only once navigated a vessel in those waters—thirty-two years ago, and then in a sloop drawing ten or twelve feet. On that occasion he had not sounded the shoal, having probably no occasion so to do, since there was known to be water enough on it for such a craft. He thought it possible that a shoal might have formed in thirty-two years. He had known that happen. In fact he named places in which to his knowledge there had once been twenty feet and over of water, and there was then but twelve or fourteen. In short he utterly ruined any claim he ever had to be considered a useful pilot on a line of battle ship, and it is manifest that he did not know what he was doing by every word that came out of his mouth. The Court, taking into account Mr Panmure's approved honesty, and wholesome sentiments, contented itself with declaring that he must never again be employed to pilot His Majesty's ships. Shuldham and his officers were acquitted of all blame.

It would be rash to affirm that on this, and many

other occasions, a fellow feeling did not make the captains wondrous kind to a brother officer, and incline them to throw the whole blame on the pilot. Naval officers were but men born of women, and, as the Admiralty official who compiled the summaries of Courts Martial from 1755 to 1805 acutely remarks in reference to another case, there are sentences which can be accounted for only by the character of the judges. On this occasion they were kind to Panmure, who was manifestly one of many who in all lines of life grow conceited on the strength of a rule of thumb and so-called "practical" knowledge. But at least he was a well-meaning blunderer. Some of the pilots on whom naval officers were forced to rely in the West Indies were absolute rogues. Panmure was at his worst considerably more tolerable than the rascal who brought Captain Carkett to shipwreck in this same year, 1762. The *Hussar*, Carkett's ship, was watching Cape François in San Domingo, by orders of Sir George Pocock, who had completed his Indian command and was now engaged in his great expedition to Havannah. The pilot steered her into danger at night, and may have acted in pure treason. For when the *Hussar* became a total wreck on the reefs, this man and the sailing-master refused to leave the island, and persisted in remaining among the French. As they did not choose to appear before the Court Martial held on Carkett and his officers when they got home, they must be held to have confessed their guilt.

It would be easy to quote a longish list of cases in which vessels were cut off at anchorages and burnt by their captains in order to prevent them from falling into the hands of the enemy. But the proceedings

were naturally of a formal nature, and do not lend themselves to quotation. A convenient example—convenient for our purpose because so normal—is the Court held on Captain C. H. Everitt, together with the officers and men of the *Solebay*, at Antigua, on the 21st February, 1782. The *Solebay* was repeating frigate to Sir F. S. Drake in Hood's fleet during the operations at the Basseterre of St Kitts. They consisted in manœuvring the French fleet of the Comte de Grasse out of its anchorage, and taking a position on the coast for the purpose of landing soldiers. The fleets were necessarily close to the land, and the *Solebay* was forced on shore by lack of room, and burnt by her captain's orders. The Court had nothing to do except to get the testimony of Drake that the frigate had kept her proper station, and to ask Captain Everitt whether he was satisfied with the conduct of his officers and men. As the answer was in both cases in the affirmative, the Court could only proceed to make official record of the fact that the captain, officers, and men, of the *Solebay* were in no way to blame for the loss of the ship*.

These losses which were incidental to some classes of operations varied indeed to a certain extent. There is for instance a marked difference between the loss of the *Solebay*, and the loss of the *Amazon*, which went ashore near the Penmarch while helping the

* When line of battle ships, or indeed smaller vessels, were drawn into a "line of battle" to engage the enemy, those which were not immediately ahead or astern of the flagship could not see the signals hoisted on her mast heads. Therefore frigates were appointed to each squadron of the whole fleet to watch the mast heads of the commander-in-chief's ship, and to repeat his signals. Their proper stations were parallel to, technically on the beam of, the ship of the divisional commander to whom the messages were to be transmitted, and at such a distance as gave them a clear view along the line to the flagship.

Indefatigable to destroy the *Droits de l'homme* in 1797, or those strandings which befell several sloops and gunvessels while trying to intercept the craft of the French invasion flotilla of 1804 and 1805, on their way to the rendezvous fixed by Napoleon. But the trials in these cases could be but formal. They were held for no other purpose than to make official record of the fact that captains and officers had done their duty.

Our survey would be incomplete if it did not include at least one battle Court Martial. The example to be chosen need not be taken from a famous engagement, but it must be one which both illustrates principles, and shows the men in action. For reasons which will, I trust, be made clear by the narrative itself, I have decided to select the set of Courts Martial held on board the *Elizabeth* at Madras, in June and July, 1758. The prisoners were three captains and a lieutenant who had played their respective parts in the encounter between Sir George Pocock and the Comte D'Aché, in the Bay of Bengal, on the 29th April. It was a clash of squadrons, not of great fleets. But great instruction may lie in small measure, and so may significant manifestations of character. When our purpose is to watch a naval Court Martial at work, the execution is of more importance than the mere scale of the operations. The bulk of the forces concerned is a thing apart from the importance of the issue. The honour and merit of the men are always great issues, whether the conflict has been between the largest of fleets or the smallest of squadrons.

These Courts Martial on the *Elizabeth* have virtues which make them peculiarly useful here. They were rich in exhibitions of character, were exceptionally well

conducted, and were admirably reported. Even in the mechanical, but by no means unimportant article of handwriting, they were beautifully executed.

The Courts which were ordered to sit by Sir George Pocock were small, and were composed of the same officers. Admiral Charles Stevens was the President, and Kempenfelt was one of the captains. Both were able men, and the second was by nature very clear-headed. The part played by the Deputy Judge Advocate was naturally concealed in naval Courts Martial, but in this case it is, I think, safe to say that Stevens and his colleagues were very capably served and aided by Mr Mickie.

The reader must be asked to bear certain conditions in mind. The instructions then in force made it incumbent on a British admiral to maintain, throughout the whole of an engagement, the order in which he brought his fleet into battle. Old tradition led admirals to seek to gain a position to windward of the enemy, and then to sail down on him before the wind and attack. Old tradition again, helped by the wish to debar an opponent from all chance of curling round one end of the line, and so putting it between two fires, led them to attack him from end to end, the first British ship tackling the first enemy, and the last the last. The formation universally chosen was a long line of ships following one another in line ahead, or side by side in line abreast, or arranged like the half closed lathes of a venetian blind—in bow and quarter line. For actual battle the order preferred would be the line ahead, which left every ship free to use her broadsides without fear of firing into her friends. Though the practice of engaging from end to end made it impossible

to concentrate on any part of an enemy's line, it would not by itself have prevented decisive results, if, when the fleet had been brought into action, the attack had been pushed home by sailing into the middle of the enemy, and bringing about a *mêlée*. But until Howe set the example on the 1st June, 1794, the obligation to maintain "the line" stood in the way.

Now it is not necessary to have been bred to the sea to understand that, when a number of units are to move together in order, they must either be all of precisely the same speed and be all capable of turning in the same space, or the movements of the whole must be regulated on those of the slowest and most awkward of the company. Moreover as the accidents of battle may make it necessary for a ship to add to her speed the rate of movement adopted must be something below the standard of the slowest.

When Pocock bore down from windward on the line of the Comte D'Aché, he had in his own line a very bad sailer—the *Cumberland*, Captain Brereton. She was a lumbering ship at her best, and on the 29th April, 1758, she had been twenty-seven months without going into dock to be cleaned. In the days before copper sheathing was adopted this implied that she was dragging a fur of barnacles and sea-weed with her. As Pocock's line bore down on the French, the *Cumberland* was the third ship from the end. The ships were to move in a line with one another. The enemy was slipping along so that the British attack had to be made "lasking," that is, in such a way that, though the courses of the ships were parallel to one another, they impinged at an angle on the course followed by the enemy. The *Cumberland* could not keep her station, or rather

Sir George would not tie himself down to the slow speed of the *Cumberland*. It followed inevitably that Captain Brereton was blocking the way. Not by any fault of his own, but simply because he was sailing in an obstructed tub, he blocked the way of the two vessels following him, the *Newcastle*, Captain Legge, and the *Weymouth*, Captain Vincent.

Long explanation, and diagrams, would be required to explain the movements of the three ships. The substance of the story is that between the obstruction created by the *Cumberland*, and the confusion it produced in the minds of Legge and Vincent, these vessels did not come into action roundly, and D'Aché was able to get off very little damaged. There were other elements at work which it would be necessary to insist on if we were writing a history of the British Navy, or a life of Pocock. It is enough to state here that this was his belief, and the tradition then prevailing bore him out. We cannot blame him, except on grounds on which no man can be justly blamed—that is to say, for not belonging to the very small body of original geniuses.

Now we can come, with some understanding of the position, to the Court Martial. No one who reads it can I think fail to reach the conclusion that the witnesses were remarkably good. All ranks were represented from captains down to plain seamen. All spoke in simple language to the point. They were telling of technical matters with which they were familiar, but, even so, they had the merit—none too common—of saying what they had to say plainly. Then they kept to facts. When they could not testify they said they could not, and gave the reason. The suspicion that

their testimony was reduced to one form by the Deputy Judge Advocate is natural. But this was not, in my opinion, the case. The reporters manifestly strove to give every man's words, and to them we owe it that we can hear what sounds like the very words of a seaman who might have sailed with Trunnion, Pipes and Hatchway, Mr John Stevenson, boatswain of the *Yarmouth*, Pocock's flagship.

" She [*i.e.* the *Weymouth*] was at a great distance from us and quite wide of being in a line, as I mentioned before. I then made use of an oath, and said what the Devil can these ships mean by not coming on the line, and we so near the enemy. Then I took no further remarks [observations] nor took no further notice as we immediately begun to engage, till it was near over that the French ceased firing, when I looked at the ships astern again. Then the first sight I saw was the *Cumberland* lying with all main topsails and mizen topeail aback, and as near as I can recollect almost a mile distance from us, and at the same time broad upon our weather quarter [the side on which the wind was blowing and the furthest from the enemy]. The position of the ships as it appeared to me on the forecastle—the *Newcastle* was shot in upon the *Cumberland's* weather quarter, very near to her, shot in as far as the chestree [chess-tree]* and the *Weymouth* was near in the same position on the *Newcastle's* weather quarter. Then I began to stamp and swore two or three oaths and said what the Devil can possess these ships to lie in that position and we in such a condition."

The boatswain's oaths were doubtless curtailed by himself, or the reporter, from respect to the gravity of the occasion. But we can see him plainly, and guess with confidence that he wore earrings, and love locks plastered in a pattern on his cheeks. The testimony of Lieutenant Collins of the *Queenborough*, shows how difficult it was to see the movements of ships in a naval battle. The *Queenborough* was a "repeating frigate," and therefore lay out of the line. But her officers could not see the French in the pall of smoke which

* The piece of oak through which the main tack was passed for hauling home the clues of the mainsail.

soon covered the scene of the action. If observation of movement was difficult, it was equally hard to take note of time. Mr John Spencer, midshipman of the *Yarmouth*, who was appointed to observe signals, could not state at what time incidents occurred because Mr Ferguson, the naval store keeper, who was engaged on the same duty "had the watch." There was only one time-keeper among them all. From a detail mentioned by Lieutenant Hay, it seems that the practice of assigning stations to every member of the crew was not yet universal. One of the *Yarmouth's* midshipmen, Mr Fenshaw, was ordered to man a boat, and go with a message to the *Weymouth*. He went on to the upper gun-deck to find men. They refused to leave their guns without the orders of Lieutenant Hay, who was in command of the battery. Fenshaw applied to the lieutenant who then picked the men. Apparently there was no regular crew assigned to the boat. In the naval battles of the eighteenth century, boats were constantly going to and fro between the ships. The slow rate at which the line of battle ships moved allowed a well-manned boat to overtake them. When Sir Charles Knowles engaged the Spaniards off Havana in 1748, his flag captain, Polycarpus Taylor, spent no small part of the time during which that scrambling encounter lasted, in rowing from van to rear with messages, instructions and threats to the captains.

When we pass from the flagship to the three vessels in the rear of the line, whose vague movements angered Sir George, and caused his boatswain to swear, we see the other side of the question. The flagship wondered why the three did not come in. The three wondered

how they were to do it. The signal for the line was flying all through. Therefore it was the clear duty of every captain of the rear ships to keep in the wake of the Admiral. They were also ordered to keep at a distance of half a cable, one hundred yards, from one another. It was a dangerously short distance, and one incident of the battle was that the *Weymouth* unrigged her own flying jib boom by running it over the stern, and against the flagstaff, of the *Newcastle*. The heavy *Cumberland* could not keep up with the Admiral, and obstructed the ships behind. Brereton tried to atone for the slow sailing of his ship by setting more sail. But he did not, in the opinion of the Court, set enough. It is to be noted that the members of the Court differed as to what would have been enough. He lost his position, and threw out the ships behind him. It may be, as the Court believed, that if Brereton, Legge and Vincent had made no mistakes, they might have overcome the difficulties which proved too much for them. But that judgment condemns the whole pedantic system imposed on the Navy by the Fighting Instructions. If these men had been free to get into action as best they could, they would have found their way in. But they were told to get into action subject to the overruling obligation to maintain a certain bearing to the flagship, and to one another. Action was made subordinate to the preservation of an order which, so far from helping them, did assist the enemy. They grew confused between their divided duties, and they failed.

The one of them who had hardest measure was Vincent of the *Weymouth*, the last ship in the line. He was so zealous to take effective part that, at one

moment, he broke the sacred line, by going ahead out of his station and filling a gap between the *Newcastle* and the *Cumberland*. For this he excused himself profusely to the Court, as for a thing contrary to custom and not justified by any signal.

The papers of the Court Martial include a document which, if not absolutely unique, is extremely rare—a “round robin” signed by one hundred and sixty-nine seamen of the *Weymouth*, for themselves and the ship’s company. It is not a manifestation of discontent nor threat of mutiny, as round robins commonly were. It is a vehement and obviously sincere plea, addressed to the Court, on behalf of the captain. Through it we can listen to the very voices of the seamen pleading vehemently, and struggling to find expression across violations of grammar, and with desperate anxiety to reach force by aid of repetition.

“Honoured Gentlemen.

Being informed by our acquaintances that the sentence of the Court Martial is like to be too harsh upon our worthy Captain Vincent, and we all being very well convinced that he did everything to the utmost of his power to bring the *Weymouth* to a close engagement with the French Squadron had not we been hindered by the damned *Newcastle*, and afterwards by the cursed *Cumberland* who was the hindrance of our own success that day. It being very well convinced that no officer would behave with greater courage and resolution than our worthy Captain Vincent did, and as every one of us was and are ready to go through fire and water with so good and courageous a Captain to whom few captains can come into both courage and humanity, and we being certain that it was not in Captain Vincent’s power to do more than he did, nor was it in his to bring the *Weymouth* to a closer engagement than he did, because of the *Newcastle* and *Cumberland* and that our worthy good and brave Captain may be acquitted with honour is the best we can desire in hopes that in a short time we shall have it in our power to show who is cowards and who is not, for our Captain we are ready to lay down all our lives, and everything that is dear and sacred to us in this world, because we are certain that none possessed by better principles or with greater courage, or fight a ship better than

he can, nor have a greater desire to destroy the enemy than he did and being very well convinced that our worthy Captain neither wanted courage nor conduct but could not close the action as soon as he would have done by reason of the damned *Newcastle* and the cursed *Cumberland* by not making sail as desired by our noble Captain several times, and we desire that this letter may be asserted and printed with the too much injured and worthy Captain Vincent's trial, and we humbly beg to subscribe ourselves to the gentlemen, and we can attest that not a ship was closer engaged that day except the *Yarmouth* though not so nigh as our worthy Captain could have wished yet as we think in a line with the admiral. So we beg leave to subscribe ourselves His Majesty's servants loyal and your most obedient and humble servants to command."

The sentences passed by the Court were, to take them in the order in which the trials were held, that Vincent should be dismissed from the command of his ship, that Legge should be dismissed the service, and Brereton should lose a year's seniority. These penalties should be a warning to those who are misled by the sentence passed on Byng in the previous year, into supposing that a Court Martial could inflict no other punishment than death on officers who had failed to do their possible best in action—and that men must be capitally punished for errors of judgment. The twelfth and thirteenth articles of the code of George II did indeed declare that "any person in the Fleet" who, through cowardice, disaffection or negligence, failed in battle or pursuit, could be punished by death alone. But it was not necessary to bring an officer under these two articles, where neither cowardice, disaffection nor negligence were charged, and when he was a subordinate. He could be condemned under the 11th article, which says :

"Every person in the fleet who shall not duly observe the orders of the Admiral, Flag Officer, Commander of any Squadron or Division, or other his superior officer, for assailing joining battle with, or making defence against any Fleet Squadron or Ship, or shall not obey the orders

of his Superior officer aforesaid in Time of Action, to the best of his power, or shall not use all possible Endeavours to put the same effectually in Execution, every such person so offending and being convicted thereof by the Sentence of the Court Martial, shall suffer death or such other Punishment as from the nature and degree of the offence a Court Martial shall deem him to deserve."

Byng, who was himself the Admiral, did not come under this article. Pocock's captains did, and were punished for "error of judgment" only. The Court expressly acquitted them of cowardice, disaffection, or negligence.

The fourth of these Courts Martial at Madras was not concerned with the movements of the squadron in battle, but with the conduct of a particular officer, Lieutenant Collier of the *Salisbury*. He demanded a Court Martial himself, because it gave him the only effectual means of answering certain insinuations due to the carping tongues, and perhaps the personal hostility of members of the crew, whom he could not force to give him "the satisfaction of a gentleman."

Lieutenant Collier was stationed on the main-deck in command of the battery. Shortly after the action began he found that the powder was not being passed up rapidly. He bent over the hatchway from which the grating had been removed and shouted his orders to the men below. Whether because he overbalanced himself, or because he was accidentally pushed, he fell into the hold. His head was wounded by the fall and for a few moments he lay insensible between two chests. As he pleaded in his defence, he would not have thrown himself headlong, at the risk of breaking his neck, if his object had been to escape the dangers of the battery. For the rest they were not serious, for the French were firing to dismast and the loss in the *Salisbury*, and indeed

in all the ships engaged, was trifling. The fact must be recognized with regret, but it was none the less the fact, that charges of cowardice were eagerly bandied in that and other times. When Mr Collier struggled to his feet and came staggering along, dazed with his fall, he met the carpenter, Parker, whose station in battle was below, to stop shot holes on the water line. Mr Parker was the real author of the Court Martial and may be allowed to speak for himself. We have heard the loyal men of the *Weymouth* and can now listen to a snarler and insinuator.

“Some time in the action I saw Mr Collier coming through the sheet cable tier. After that when I came abreast of the main hatchway he flung himself along upon a cot frame with his head aft and made a groan. I asked him if he was wounded. He made no answer, I looked at him and perceived a little blood on his forehead, at which time Moredite (*sic*) one of the people in the wing said to him ‘dont be like a coward but get up and fight.’ Then Mr Collier replied I will and rose himself up upon his backside and lay down again. I then took him by the two arms and lifted him up and desired he would go upon deck. He inquired which was the way to the main hatchway. I lifted him over some Fakis (*sic*) of the cable, and he took hold of the ropes at the main hatchway, and went up on the gundeck by my assistance. I saw no more of him during the action.”

Moredite did not bear out Parker’s version of what was said, and one of the witnesses declared that the carpenter, in his talk after the action, showed malignity, professing that Mr Collier was disgraced and could not show his face again.

The lieutenant returned to his post on the main-deck. All the other witnesses agreed that he gave his orders clearly and with self possession while at his post. Here is the testimony of a seaman whose spirit was very different from Mr Parker’s—Thomas Gist, master’s mate :

“Just before the action Mr Collier came to me, and told me I was quartered at the braces, to be careful that the boys did not carry their powder any where near the match Tube. Just as he left me I heard him give orders to the people not to load with grape shot till he gave them orders, and to be very careful in pointing guns at the enemy not to throw any shot away, from this time I did not see Mr Collier till about the middle of the action when I gave a cartridge of powder to a man to hold who was shot dead behind me, and his brains flew all about. Just after that I saw Mr Collier lying by the galley with his face all blood, upon which I and another took him up quite speechless, and carried him down into the cockpit and did not see him again till the action was over.”

The Court found that Mr Collier had done his duty like a good officer during the short time he was able to be on deck. He had not been actually struck by the cannon ball which killed the man who was holding the cartridge. He had been knocked down by the wind of the shot and stunned. Here was just the case where, with the help of a good deal of malignity, and a moderate exercise of ingenuity, it was possible to tell the tale very much to the disadvantage of Mr Collier. If a brother officer had insinuated the charge of cowardice, the custom of the time gave him an obvious means of vindicating himself. Against the muttering of the lower deck he had no resource but to apply for a Court Martial, which could perform the functions of a Court of Honour. He was well able to face one, for he had served before, and had volunteered for service. We may thank Mr Parker for affording us a glance into the inside of a battle ship in action, in the eighteenth century.

The frigate action holds a conspicuous place in the history of the Navy, but it is not easy to find a really good example from the records of Courts Martial. For English frigates were seldom taken, as Admiral Jurien de la Gravière has said, and it was only after capture

or destruction that a Court Martial would be held. And the case where a frigate was taken or driven ashore by a squadron would not be truly characteristic of a frigate action. From the short list of fair cases, I shall choose the surrender of the *Crescent* to the Dutch frigate *Brill*. It makes a better story than most, and there is in it a fair balance of force and quality, and a diversity of fortune, which give it peculiar interest.

The *Crescent* was a 28-gun frigate, commanded by Captain Thomas Pakenham. It by no means follows that because she carried 28 guns she did not possess a larger number of pieces of ordnance. The carronade had been recently introduced, and pieces of this short and smashing type were carried in addition to the long guns, which alone were technically "guns," and were alone allowed to count in the ship's official armament. It is at least eminently probable that the *Crescent* carried some, perhaps even as many as eight, carronades, a fact to be carefully borne in mind, because the vessel to which she struck was a 36-gun frigate. The carronade was, as yet, a British piece. Thirty-six guns was no doubt the full armament of the *Brill*, but twenty-eight was almost certainly not the full armament of the *Crescent*. It was long our uncandid practice, when comparing the forces of our ships to those of foreigners, to count all their pieces of ordnance, but to give only the official armament of our own. Thus we were made to appear victorious over greatly superior forces. The case was exceptional in more ways than one—and chiefly in this, that when the Court Martial, which sat on the *Warspite* at Portsmouth, on the 30th July, 1781, had tried Captain Pakenham for surrendering the *Crescent* to a Dutch frigate, it then went on to try his

successor in command, Lieutenant Bligh, for surrendering her to two French frigates, and it acquitted both honourably.

This curious result was reached in the following way. The *Crescent* was joined with the *Flora*, Captain Williams, in a mission to the English garrison of Minorca. When near Ceuta, they were sighted, and at once attacked, by two Dutch frigates, the *Brill* and the *Castor*, both of thirty-six guns. The *Flora* was of thirty-six guns, and was provided with carronades. She was stronger than either of the Dutchmen. A well-appointed Dutch ship was always counted a more formidable opponent than a French or a Spanish. The gunnery of the phlegmatic Hollanders was steady, and they were far better "ropemen," that is to say, they were more prompt, more skilful in repairing damage to their rigging and the tackles of their guns than our other enemies. It was dangerous to allow them to gain an initial advantage, and on this occasion they gained one.

The two English frigates were at a distance from one another when the enemy bore down on them. Therefore the *Castor* and the *Brill* were able to throw themselves on the *Crescent*, the first assailing her on the port, the second on the starboard side. The *Crescent* was forced to turn to starboard to bring her guns to bear with effect on the *Brill*, and was unable to prevent the *Castor* from falling across her stern and raking her with great effect. One shot ranged all along her deck, doing great damage, and others cut her rigging. When the *Flora* came up she took off the *Castor*. The *Crescent* was left to fight it out with the *Brill*. They engaged at pistol shot distance. Both

crews were disciplined and resolute, and the captains fought their ships with judgment. Other things being equal, the already injured *Crescent* was crushed by the heavier broadside of the *Brill*. Her mainmast came down—but let us hear her master, Mr William Stacey, describing her condition at the end of her duel.

“ Her main and mizen mast gone, and booms fallen on the deck, all the waist guns disabled—two on the forecastle dismantled and disabled and four in the waist. The ships rudder set fast by a shot between the boarding of the rudder, and the sternpost. The helm then hard aport, which could not be moved, nor was it moved till six o'clock that evening. The ship falling round off before the sea with her stern towards the enemy at the distance of about 40 yards. Our colours having gone overboard with the mizen mast, and hanging over the Quarter occasioned the enemy I believe to hail us, to know if we had struck our colours or not. I think the ship could not have been defended any longer—we had not a gun in the ship that could have been brought to bear on the enemy.”

The wreck of the mainmast had not fallen overboard, but inside the ship, and was lying in a mass of ruin on her guns.

Only when further defence would have been merely contumacious, did Captain Pakenham surrender.

When he struck his colours the *Flora* had not yet quite overpowered the *Castor*, which made a stout defence. The *Brill* had suffered heavily and when the now victorious *Flora* came up, she went off to Cadiz.

Captain Pakenham refused to resume the command of his vessel. He had surrendered and considered that he must await a Court Martial. Captain Williams put his first lieutenant, Robert Bligh, in command, and the three ships now went on their way, but not for long. They were met by two French frigates. The crippled *Castor* and still more crippled *Crescent* told their tale to the first glance. The Frenchmen bore down on the *Crescent* together. Twenty-seven of her men had been

killed and sixty-eight wounded in the action with the *Brill*, little less than half her crew. Lieutenant Bligh had but five men to a gun, and a vessel which was jury rigged. He surrendered and the Court Martial held that he could have done no other. The *Flora*, weakened by loss in the engagement, and by the necessity for putting a prize crew into the *Castor*, did not feel equal to meeting two fresh opponents. She made off and the *Castor* was retaken.

The judgment of the Court which is quoted as the model of an honourable acquittal, gives a perfectly adequate estimate of the action.

“ The Court cannot dismiss Captain Pakenham, without expressing their admiration of his conduct on this occasion, wherein he has manifested the skill of an able and judicious seaman, and the intrepidity of a gallant officer ; and from the great and extraordinary number of the killed and wounded on board the *Crescent*, as well as the state she was in at the time of the surrender, the court express the highest approbation of the support given by the officers and the men of the *Crescent* to their Captain, and of their courage and steadiness during the action, a circumstance that, while it reflects high honour on them, does no less credit and honour to the discipline kept by Captain Pakenham.”

Shipwreck is an always possible misfortune for all seafaring men. In so far as it came because of the violence of the storm, or ignorance, whether pardonable or not, of the coast, or error in seamanship, it was the same disaster for the man-of-war, or the trader. The shipwreck, which I will call shipwreck pure and simple, befell the Navy as it did the Maritime Service of the East India Company. It makes a stirring tale, but one which is neither easy to tell properly, nor I think very appropriate to this book. When told accurately it must be conveyed in what I find described by an admiralty official as “ the appropriate language of seamen.” Now that language is highly technical, and

will hardly be understood by the general reader without explanations which require both many words, and adequate illustrations. Nor do I undertake to be competent to supply either in all cases. There are some in which it is not necessary to have been bred to the sea to understand why a vessel was lost. All of us can see very well how it was that in 1758 the xebec* *Mediterranean* came to grief on the Malora shoal near Leghorn. The *Mediterranean* had been acquired and fitted as a cruiser by Admiral Brodrick. She was on her way from Gorgona to Leghorn Roads, in thick and stormy weather. Her loss was due mainly to the fact that the compasses provided for her differed by two points and a half, and so led her to run on the shoal, where she went to pieces. Her officers also mistook the very poor light, which was all the science of the time could provide for lighthouse use, for the light of a ship. The Court may have been right to acquit Captain Grant and his officers of all blame. It does not clearly appear how long he had had to navigate with those compasses, nor whether he had had time enough to test them. If he had the opportunity he might, one supposes, have found out which was right, and if both were wrong then to what extent. We can see from the misfortune of the poor xebec that the seamen of that age were forced to work with bad instruments. And that explains why even

* "Xebec, or Zebec. A small three-masted vessel of the Mediterranean, distinguished from all other European vessels by the great projection of her bow and overhanging of her stern. Being generally equipped as a corsair, the xebec was constructed with a narrow floor [the part of her surface below water on either side of the keelson on which she would rest when aground], for speed, and of great breadth [on the water line and upper deck], to enable her to carry a great press of sail." Ad. Smyth's *Sailors' Word Book*.

the Navy made constant use of the local knowledge of the pilot.

There is, however, another kind of shipwreck, which I would define as military, or man-of-war, shipwreck proper. That occurred when a vessel ran on a reef or on the sands, while pressing an attack or the pursuit of an enemy. We have seen how this could befall a warship by the circumstances of the loss of the *Raisnable* at Martinique. But that was complicated by the presumption of a presumably well-meaning but incompetent pilot.

Of shipwreck pure and simple I will give one example, because the story is a good one, and because we have it from a survivor who speaks in the accent of truth.

On the 4th January, 1794, a Court Martial met on board H.M.S. *Cambridge* to try the surviving officers and men of the cutter *Pigmy*. The Court came to the conclusion that the little vessel had been lost by the fault of the pilot, and it added, "But in justice to the memory of Lieutenant Pulliblack, commander of the said cutter, we cannot help highly approving of his exemplary and meritorious attention to his duty, to which he sacrificed both his own and son's life."

It is good to look at a brave man, making a brave end in the discharge of his duty, and good also to rescue his memory from being totally forgotten if we can. The *Pigmy* was but a very small vessel, Lieutenant Pulliblack is a forgotten man, the wreck was one of innumerable tragedies of the sea of which no memory remains, not even on the scene where men wrought and died in the storm. But because the lieutenant and his handful of a crew are obscure, they the better represent the great anonymous mass of officers and men of the Navy who

formed its body, and without whom the great chiefs could have done nothing. Let us listen to the story told to the Court Martial by Mr James Thomas, the clerk, very simply, and he convinces us, no less truly. It may first be noted that the *Pigmy* sailed from Yarmouth for Guernsey in winter, and, having fulfilled her mission in the islands, was on her way to Plymouth.

“Sunday evening the 16th December last about six o'clock in the evening we made Bigberry Bay [the weather was thick and the wind strong, and the pilot thought he saw the Ramhead]. Supposing it to be Plymouth Sound, but found our mistake when we were too near the shore. In veering the cutter to get clear of the shore the peak halliards unhooked, we then stood off as far as we could from the shore. The cutter having no way she would not play or go about, which obliged us to run into the mouth of the bay to keep clear of the rocks, it being the advice of the pilot we then had on board. We let go our best bower anchor, and saw a reef of rocks all round us, we fired four guns for assistance, and saw lights on the shore. Lieutenant Pulliblack then ordered the jolly boat out, and directed an officer and four people to go into her, which boat a few fathoms off the cutter upset. By this time we found her driving and let go our small bower but neither of our cables could bring us up. She then drove right among a reef of rocks, and carried away her rudder and sternpost. The Lieutenant ordered the people to get a hawser out and throw a lead line to the people that had got safe ashore in the jolly boat [Had been washed ashore from the upset boat] by making the end fast to the hawser we got in among the rocks, and the people made it fast. The Lieutenant gave permission that anyone who chose to go ashore might go. [The first to go was the pilot.] Her starboard bow was by this time beaten in, and whoever had a mind to go on shore went on shore by the means of the hawser. Ten more besides Lieutenant Pulliblack said they would stay by him [? her] of which number myself was one. The mast was then cut away. The hawser slipped off the rocks, a flood tide making very fast, the surf beating over her till half past two in the morning when she went to pieces, and all the eleven of us were washed into the sea, and myself and one man more only saved out of the eleven.”

CONCLUSION

When we have made a rapid survey of the working of the tribunal of the old Navy, but one which is I hope not merely superficial, we may think it right to answer the question—what was the value of this Court as an instrument for the discovery of the truth and the administration of justice? The reader will of course prefer to answer that question for himself. But without wishing to fall into the pretentious error of trying to dictate the judgment of others, I will venture to give my own opinion, based on not only the cases here quoted, but the many others I have looked at, and have not thought it necessary, or have not had the space, to include.

It is that in the main the officers who sat on naval Courts Martial strove to do what they considered to be justice. I am well aware that of itself this was not enough, if their view of what constituted justice was wrong. Nothing is easier than to point out the essential folly of the phrase, "They may not get law but they get justice," which may be heard from naval and military gentlemen. When judges arrogate to themselves the right to give justice which is not law, they are very liable to fall into the mistake of judging by their feelings, and not by the evidence. We have heard of Courts Martial which have not scrupled to say that, though

the guilt of the prisoner was not proved, they have found him guilty, because the offence of which he was accused had lately been very common, and they thought it necessary to make an example. Obviously enough this is a method of doing justice which opens the door to flagrant abuses. But the naval and military gentlemen who speak thus do so in the innocence of their hearts. Before accusing them of moral turpitude we must be sure, not only that they condemned prisoners whose guilt was not fully proved, but that they condemned those whom they thought innocent, simply in order to "make an example." The questions ought to be, were the old naval Courts Martial frivolous in deciding? were they indifferent to the evidence?

My own opinion, which I have endeavoured to base on fairly chosen examples, is that the charges of frivolity and indifference to evidence cannot fairly be brought against naval Courts Martial. Nor do I suppose that it would be well founded in the case of army Courts Martial. Naval and military gentlemen were but Englishmen, who had the general disposition of their countrymen to see fair play. In a sense, and that an important one, the humblest sailor who appeared before a Court Martial had more fairplay than he would have had at Assizes, if he had been on trial for a burglary. There he would have had the Crown lawyers against him, and would himself not have been allowed the benefit of counsel except on points of law. His witnesses could not be sworn, and the witnesses for the Crown were. He was a deliberately disarmed man pitted against fully-armed opponents who, let us allow, would not play the game unfairly, but would play the game—of which they were masters and he was ignorant.

It is true no doubt, that as the eighteenth century went on, the humanity of the judges led them to allow a wide licence to the prisoner's counsel. But there was the system, and it was very harsh. Now at a Court Martial if the prisoner had no counsel to help him, neither were there any counsel against him. His witnesses were on the same footing as the witnesses for the prosecution. And the captain, or other naval officer who conducted the prosecution, had no more training in that game than the prisoner. We have seen from the case of the men accused of mutinous assembly by Sir Hyde Parker, that an acute foremast hand could show himself more than a match for a post captain.

I do not say that Court Martial always showed a perfectly judicial spirit. Some of the cases quoted in this book are there to prove that it could fail. Class feeling had a certain influence, and what was no less incompatible with the absolute impartiality of the perfect judge, so had a leaning to think that a penalty must be inflicted in the interests of discipline. But I find no evidence that, even before the reformation made by the act of George II, Courts Martial were guilty of disregarding evidence, and punishing in mere tyranny. My impression is that they meant to do what was right.

Good intentions would have been of little avail if intelligence had been lacking. There were occasions on which it was to seek, and good lawyers have been known to assert that this has happened even in tribunals composed of men elaborately trained to administer the law. The acquittal of Thickpenny and of Butler* are examples of unintelligence—and of the kind of

* See pages 145 and 148.

unintelligence born of pedantry. It is to be noted that in both cases the fault of the Court was not that it was ferocious, but that it was lax. They tend to show that naval Court Martial was, if anything, glad of an excuse not to pass the most severe sentences. When the prisoner was very young, Court Martial was habitually humane. In one of the trials arising out of the *Hermione* mutiny, at a time when Courts Martial were naturally inclined to severity, a boy of twelve who was on board the frigate as servant to his father, a warrant officer, was included in a batch of prisoners. He was borne on the ship's books, and was therefore one of the crew. There was a sufficient reason for including him, yet the Court expressed a certain indignation at being called upon to try such a child for such an offence. On another occasion in 1764 a captain in North America caused a Court Martial to be held on a boy of fifteen for running away with a boat, and taking a ramble in Caderouse Bay. He was told in measured terms, but quite intelligibly, that he was no better than a fool for setting the solemn apparatus of Court Martial in motion to try a boy for playing truant. Even when the plea of youth could not be made, and in the worst cases, the Court would distinguish between degrees of guilt. In 1801 two sailors of the *Hermione* were tried at Portsmouth—Henry Poulson and William Johnson. The Court condemned both to death, but recommended Johnson to mercy. The decision had a sequel which shows Court Martial in the light of a tribunal tenacious of its independence. My Lords of the Admiralty could not understand why the distinction was made, and, after consulting with counsel, called upon the Court to explain. Admiral Holloway, the president, replied, for

himself and his colleagues, that " they humbly conceived their Lordships would admit that circumstances might arise at a Court Martial in addition to those appearing on the minutes of which none but the members could form a full opinion, and they begged to observe that the circumstances were so connected with the general vote of opinion upon the occasion that they could not consistently with the oath they had taken, explain further to their Lordships."

On this occasion it was not the naval officers who were in favour of indiscriminate severity. The recommendation of the Court was attended to, and Johnson was only transported.

There were instances in which what appeared to the authorities on shore, and even to some naval officers, to be purely pedantry, is susceptible of defence.

It will be remembered that privateersmen and the crews of Indiamen were under the articles of war, and liable to be tried by Court Martial. The acts of George II and George III, by which the liability was imposed, declared that the offenders must be kept under arrest and brought to a place where a Court Martial could be held.

On the 1st June, 1798, Captain Charles Elton Prescott of the H.E.I. Company's ship *Princess Charlotte*, applied to Sir H. Cloberry Christian, the admiral in command at the Cape, to order a Court Martial to sit on four members of his crew—John Mills, quartermaster, William Laws, seaman, William Guttridge, and John Newberry, boatswain's mates, for mutinous conduct on the 29th and 30th of last month. Admiral Christian ordered the Court to meet, and it did meet on the 4th June, on board H.M.S. *Sceptre* in Simon's Bay.

But no Court Martial followed, for when the president, Captain Valentine Edwards, and the other captains came to consider the matter, they found themselves forced to decide that they had no jurisdiction. The act said that the accused must be brought as prisoners to the place where the Court Martial was to be held. Now the four men of the *Princess Charlotte* had not been kept as prisoners. They had taken part in the work of the ship. It is true that the time during which they can have worked must have been short, but it included the mooring of the *Princess Charlotte* in Simon's Bay, and the three days before the Court met. Captain Valentine Edwards and his colleagues declined to try the men. Their refusal surprised and annoyed, not only the captain of the Indiaman, but Admiral Christian, the agents of the Company ashore, and the High Commissioner, Lord MacCartney. Consultations were held by these authorities, and the High Commissioner grew sarcastic. "If," he said, "one attends only to a passage taken singly in an Act of Parliament, or in the Scriptures without looking to what goes before, the Statute and the Bible may be brought to talk nonsense and blasphemy."

The Court was asked whether it had not failed to consider the case of a captain who was not able to spare the services of the men to preserve the ship. Were mutineers to go free in such a case? Attempts were made to persuade the Court to sit. It skilled not. The captains would not be persuaded, and no Court Martial was held on the mutineers of the *Princess Charlotte*.

For, absurd as the obstinacy of the captains appeared to Lord MacCartney, it can be justified. The case was, in truth, one in which strict attention to the letter

of the law made for justice. All the talk about the hard position of a captain who lacked the power to confine a man had no bearing on this case. Captain Prescott could well have confined them. By making use of their services after their offence had been committed, he was to be held to have condoned it. As we have seen in the story of Robert Nelson of the *Belligueux*, a captain who neither punished a man summarily, nor confined him to be tried by Court Martial, was thought in the Navy to have condoned. And if that rule were not followed, injustice might be done. Take the case of a man who is "mutinous" at the beginning of a cruise, and is allowed to return to his work. In the course of the cruise, the ship takes prizes which he helps to win. Is the captain to be allowed to rake up the offence three months or more after it was committed, and bring the man to a Court Martial, which would pass a sentence very probably carrying with it forfeiture of fairly earned prize money? The captains who appeared so obtuse to Lord MacCartney were, in act, on the side of the men. By adhering even pigheadedly and pedantically to the letter, they did what was probably justice.

Here again a Court had shown itself resolved to resist pressure. Almost exactly sixteen years before—on the 29th July, 1782—another had shown that it could disregard the manifest wish of no less a man than Rodney. He was then fresh from his great victory off Dominica, on the 12th April. It is true that he had deeply offended many of his captains by not following up his success with vigour, but he was the commander-in-chief, and after the glorious blow by which he wiped away the discredits of the American War, was the



Sir Isaac Coffin



darling of the nation. Rodney had given commissions as lieutenant to three young gentlemen, Teeling, Oldfield, and Mends, and had appointed them to the *Shrewsbury*. The captain of the *Shrewsbury* was Isaac Coffin, a most peremptory officer who, in his own case, was by no means meticulous in observing the letter of the law. He was at the time ill, and was perhaps exceptionally disposed to snap fiercely. The first of these three to present himself to Coffin was Mr Teeling. Now Coffin knew perfectly well that Teeling had only served for three years on a man-of-war, and had not been longer at sea. The law required that before a lieutenant's commission could be lawfully given, the recipient must have been borne on the books of a man-of-war for five years, and in theory, though not in practice (Coffin knew the distinction between borne and present as well as any man), must have served for that time. He must take the oath of allegiance, and must pass before a board of captains to show that he could do the work of an able seaman. Teeling had complied with none of these conditions. And so Coffin told him. According to the captain, Mr Teeling answered in the best midshipman style that he and Lord Rodney had settled that between them. Mr Teeling indeed declared that his language was more modest. Coffin marched him off. Mends had been seven years at sea and for four years and three months of them in the Navy. He also had not served his time. Oldfield had been for twelve years at sea, and for five in the Navy. Coffin professed a perfect readiness to receive him if he passed the qualifying examination.

Rodney was made very angry by this refusal to receive his nominees, and his exasperation was not

lessened when Coffin pleaded the state of his health for not waiting on him in the flagship, and justified his refusal in a sharply worded letter, on the ground that the appointments were illegal. He sent Captain Bowen to ask Coffin whether he positively refused to receive the three, to put him under arrest and to place the first lieutenant, Incedon, in command of the *Shrewsbury*. Coffin said he did not positively refuse and added the question whether Bowen was not authorized to put him under arrest. When the answer was in the affirmative, he replied, "Then what is the good of asking."

He came before a Court Martial in due course for contempt to his admiral and disobedience to orders. The Court acquitted him on the charge of contempt, and justified his disobedience on the ground that the appointments were illegal. One is sorry to have to know that Rodney left his station under the discredit of this sharp condemnation by his own captains. It is more melancholy to have to know that it was assuredly an expression of the dislike his high ways had aroused against him. But the Court was manifestly as independent as any tribunal could be.

A Court Martial might of course misunderstand the statute—a misfortune from which the civil magistrate is not immune. In 1799 one did, but not without excuse, and not in any spirit of harshness to the prisoner. Their error lay in the mistaken interpretation of the second part of the twenty-third section of the Naval Discipline Act of George II. It declares that no person or persons not flying from justice shall be tried "unless a Court Martial to try such offender shall be ordered by the said Lord High Admiral, or the said Commissioners, or the said Commander-in-Chief, either within three

years after such offence shall be committed, or within one year after the return of the Ship or of the Squadron to which such offender shall belong, into any of the Ports of *Great Britain* or *Ireland*, or within one year after the Return of such Offender into *Great Britain* or *Ireland*."

Mr John Campbell, midshipman of H.M.S. *Monarch*, absented himself without leave, and ran away to Bath. He was recognized there and arrested by Lieutenant Drummond, on the 31st December, 1797. But he was left in prison for fifteen months, before he was brought to trial on the 2nd April, 1799. He protested to the Court against being tried at all, on the ground that a year had passed since he had been arrested, during which time he had been at home. Therefore he claimed that he could not be tried. The Court looked at the 23rd section and came to the same conclusion. It understood the Act to mean that when an offence was committed abroad it must be tried abroad within three years, or at home within that period or any part of it, plus one year to be dated from the return of the ship, squadron, or offender to Great Britain or Ireland ; but, that when the offence was committed at home the trial must be within one year. There was a very general opinion that this was the sense of the Act, and the point had never been cleared up. When the Court found that it had no power to try Mr Campbell, it reported to that effect to the Admiralty and remitted the papers. The Admiralty laid them before the Attorney and Solicitor-General, Sir John Scott (soon to be Lord Eldon), and Mr Percival. They could not understand how the Court Martial came to take the view it did. To them it was plain that the meaning of the act was that the

offender might be tried within three years of the committing of the offence, either at home or abroad, but that when it was committed abroad then the period during which a trial might be held could be extended by one year, to begin with the return of the ship, squadron, or offender, to Great Britain or Ireland. They thought that the Court might fairly take Mr Campbell's fifteen months' detention into account and pass a light sentence on him, but they were of opinion that he might be tried. They must be supposed to have been right, and the naval officers forming the Court were open to the accusation of having fallen into that error in critical method by which, as Lord MacCartney said, nonsense can be made of the Statute Book and blasphemy of the Bible. But if they made nonsense of the 23rd section of the Act, they had the excuse that it was most clumsily worded. The parliamentary draftsmen who drew it were no doubt very worthy persons, but if the government in 1749 had asked Fielding or Johnson to supply them with English we may be sure that no confusion would have arisen.

Naval Court Martial is commonly accused of having been brutal in inflicting punishment. I am not prepared to assert that it never erred by excess, and where I have found an example, as in the atrocious case of the sentence passed on the prize master Hervey, have not hesitated to call the thing by its name. But here, as always, it is a duty of elementary honesty to distinguish.

As far as I know, and I think I know enough to be entitled to an opinion, naval Court Martial never went to the extremes of barbarity reached by the Courts Martial of the Army. One thing I am prepared to

affirm. It is that the records of the naval Court contain nothing like the sentence of two hundred lashes inflicted on three of the wretched women who followed the camp of the Duke of Cumberland in Flanders. Women swarmed in the ships when in port, and were not very rarely found in ships at sea. Some of them we may be sure gave trouble—and the kind of trouble for which they might have been whipped on shore. I can find no case in which one of them was brought to the gangway on a man-of-war. The argument from silence must not be pushed too far, but this at least may be affirmed with confidence—that if the Navy had done what the Army in Flanders (and elsewhere) did, some traces of its action would have been found by a reader who, without professing to have read all the thousands of reports of trials, has investigated them closely.

As regards the sentences of corporal punishment passed on the men, they are revolting to us. But without wishing to excuse them, we can explain them ; we can even explain what looks like their worst feature—the progressive increase in their severity during the eighteenth century.

The Navy took, and was forced to take, by the press and from the jails, a large proportion of unruly and positively criminal men. It held the common opinion of its time that severity of punishment was just when the offender was perverse, and also that fear was the only deterrent. What neither the old Navy nor the time considered was, that the most terrible punishment would not deter those who acted under the influence of alcohol, or the passion for alcohol, or the furious rage which rendered them incapable of foresight.

The disgusting brute who murdered the black child* in the presence of witnesses, and with the certainty that he would be called to account, could think of nothing but the bottles of raw spirit before him. He was only an extreme example of others who, in their wild longing for liberty, or in mere fury, rushed into excesses which they must have known, if they had retained any capacity for thinking, would bring on them the lash. There was but one effectual defence against these ungovernable animals—and that was to be obtained by keeping them out of the Navy. But that could only have been achieved by maintaining in peace a force equal at least to the first demands of war. Such a force could be raised in one way alone, by making the naval service so attractive that the best class of men would come and would stay. That means by taking them young and paying them sufficient wages. But this—the remedy we have now found for the evil—was not within the reach of the State in the ages before great mechanical discoveries made our accessible deposits of coal and iron fully available. Great Britain was rich in comparison with some of her neighbours, but poor when tried by the standard of to-day. Every peace began a period of restriction, or recuperation, and of accumulation of resources for the next war. The Navy was cut down to the quick, and when war returned was to be built up in a hot haste, which allowed of no discrimination in the choice of men.

I would like to be able to say that the Navy strove to deal with the pest by some means of a more humane character than an ever increasing severity in the use of the scourge. Unhappily naval officers were as wise as,

* See page 156.

and no wiser than, their countrymen and kinsmen on shore and in Parliament, who strove to check crime, not by organizing an efficient police, but by multiplying the number of capital felonies. On shore the effort failed because the criminals believed, with good reason, that they had an excellent chance of escape, and they had, because the police were feeble, and men were more humane than the law. Sentences were not carried out, injured people would not prosecute, juries would not find prisoners guilty of capital offences, except when the excess of the evil provoked a reaction of rage. In the Navy unthinking ruffians were no more deterred by the more savage punishment than by the less savage. The recklessness of some among the men is shown by the number of cases in which seamen or marines refused to be punished at the gangway, and used their right to insist on a Court Martial, though their offence against discipline was undeniable, and they must have known that the Court would sentence them to a far more severe penalty than the summary one ordered by the captain.

The treatment of the insane was no doubt peculiarly shocking, but that was very much indeed a universal fault till recent times.

Now and then the Court may be found yielding to one human weakness—the inability to refrain from saying something when there was nothing to be said. As good an example as any is given by the finding of the officers who tried Collingwood at Port Royal, on the 30th September, 1777, on a charge of insubordination brought by his captain. The case for the prosecution is a chronicle of small beer, the items of which had been accumulated during months, and produced when the

captain thought that their cumulative effect would be impressive. The only part of the report which now possesses any interest is Collingwood's defence. It has all the qualities of his excellent style. But it also gives a far stronger impression than anything else of his writing, of his capacity to carry a cutting-edge, and to express contempt. He tells his accuser in the quietest, but also the most unmistakable way in the world, that he is neither officer nor gentleman. He tells the Court that he could not understand how any officer should scrape such trifles as these together in silence, and then found an application for a Court Martial on them. He declares that he really could not answer accusations relating to insignificant matters months old which he had forgotten, and ends by asking his judges whether they see anything in it all, to show that he had in any way failed in his duty. There was nothing, and so the Court was bound to declare. But it manifestly considered that in the interests of discipline, and of subordination—the pivot on which the service turns—it was bound to say something. So it solemnly told Collingwood that cheerfulness is good, and that it advised him to perform his duty in a cheerful spirit. And that is an example of how to say nothing in words, where it would have been sufficient to convey the same by silence. Yet, when all is allowed for, the Court did justice.

INDEX

- Admiral, Lord High, origin of office, xiv.
- Ambuscade*, sailors tried for theft in Messina, xxxiii.
- Amherst, Admiral, and case of murder on *Foudroyant*, xlv.
- Aquilon*, Court Martial on board; see *Ambuscade*.
- Arches, meaning of, vi.
- Articles, the first, xxiii; of 1661, of 1749, xl *et seq.*; amendment of 1779, xlv.
- Booth, Sir William, Captain, slander of by Benbow, 2; plots to carry off *Pendennis*, escapes to France, 8.
- Borough, William, his career, xvi; his quarrel with Drake, xvii *et seq.*
- Cavanagh, Matthew, seaman, case of murder of, 148-154.
- Centurion*, example of Court Martial on board of, xxiv *et seq.*
- Charles II, King, and administration of the Navy, vi.
- Chatham, Chest at, fines paid to, 3.
- Cheape, David, Captain; see *Wager*, wreck of.
- Coffin, Isaac, Captain, afterwards Admiral, tried for keeping false musters, 98-104; refuses to receive officers appointed by Rodney, 198-200.
- Collingwood, Cuthbert, Admiral, quoted for composition of crews, 95; his trial for disobedience of orders, 205, 206.
- Court Martial, Naval, dates from Commonwealth, xiii; regulation by Parliament, xxiii; example of "ship" Court Martial, xxiv *et seq.*; how changed at Restoration, xxvi *et seq.*; amended, xxx *et seq.*; Act of 1694, xxxvii; Act of 1749, xxxviii *et seq.*; territorial limits of jurisdiction, xxix, xxxiii, xlv, xlv; general estimate of, 192 *et seq.*; refusal of Court at Cape to try sailors of an Indiaman, 196-198.
- Courts Martial, Trials by, of:—three sailors of *Hampshire* 1680, 1; Woodgreen, Thomas, for slander, 1; Hastings, Anthony, Lieutenant, murder, 1; "Bombo," John = Benbow, for slander, 2; Jenkins, William, for slander, 2; Rooke, Thomas, Lieutenant, for profanity, 2; Doberall, gunner, for causing explosion in gun-room, 2, 3; Lewis, John, for embezzlement, 3; gunner of *Exeter* for causing loss of ship by explosion, 3; Wallis, Richard, seaman, for setting the *Henry* on fire, and on Hawes, boatswain, and Hardiman, Oliver, purser, for same, 4, 5; Shaw, John, seaman, for murder of Leeds, Allen, 5, 6; Jennings, Sir William, and Skelton, Charles, Captain, for disorderly conduct, 6 *et seq.*; Wilford, Captain of *Eagle*, for not revealing plot, 8; Ravenhill, Richard, for seditious words, 9; Middleton, Samuel, Chaplain, for seditious words, 10; Ferguson, Alexander, for drinking health of Pretender, 10, 11; Johnstone, Lieutenant, for seditious words, 11, 12; Birch, Austin, Captain of *Quaker* ketch, for not helping shipwrecked

crew of *Pendennis*, 12; Lumley, Lieutenant, and Parker, William, for loss of *St David*, 13, 14; Pike, John, Lieutenant, for cowardice, 14, 15; Bounty, Captain, and Moody, Captain, for loss of convoy, 15-17; Wooden, Captain, for not protecting merchant ships, 17; Wickham, Captain, and Parry, Captain, for surrendering, 17-19; Dorrington, Surgeon, for assaulting captain, 20; Mocker, Master of *Anne* ketch, for disobedience, 20; Radford, Captain, for hoisting union flag improperly, 20, 21; boatswain of *Oxford*, for assaulting Lieutenant Hamilton, 21; Oats, Lieutenant, for abusing Admiralty, 21; Gurney, Captain, for killing Lieutenant Lucas, 22; Tuar, Chaplain, for beating carpenter, 22, 23; mutineers of *Woolwich*, 23-26; captain and officers of *Assistance*, for abuse and assault, 27; Vaughan, Roger, Captain, Oakes, John, Captain, acquitted for loss of ships in defence of convoy, 29, 30; Robinson, Captain, and officers of *Hope*, for loss of ship in defence of convoy, 30-35; disorders in *Trident*, 35, 36; Griffiths, Captain of *Trident*, for dishonesty and violence, 36-38; Dampier, for oppression, 40-42; Wilkinson, Lieutenant, for abuse of captain, 45; Locke, boatswain, 46; Green, Richard, Chaplain, for wanting to fight First Lieutenant, 46, 47; McLellan, Surgeon, for caning Captain, 47-50; Lee, Benjamin, Master's Mate, for insubordination, 51; Newman, William, and Waits, William, for mutinous assembly, 52-55; Jerrard, Lieutenant, for disobedience to orders, 56, 57; Cranby, John, Captain, for "irregularities," 57; Kirke, William, Midshipman, for murder of his mother, 57-59;

Shields, sailmaker, for insubordination, 59, 60; Harris, Lieutenant, and Dring, Lieutenant, for assaulting Wilkinson, Master-Builder, 60-62; Hall, Joseph, gunner, for disobedience to orders, 64, 65; Squirrel, Yeoman, of sheets, for disrespect, 66; Robertson, Surgeon, for saying captains were Republicans, 66; Jeffcote, John, Lieutenant, for flogging seaman to death, 69, 70; Smythies, Carleton, Lieutenant of *Janus*, for neglect of duty, 69-72; Woods, Thomas, pressed man, for trying to put poison into boiler, 76, 77; Sax, Robert, Lieutenant, for killing sailors of *Britannia*, 78-80; Fielding, Captain, for improper use of press, 81-85; Paine, Lieutenant, for taking a bribe to release pressed man, 87; Baker, William, Captain's clerk, for giving unauthorized release to pressed man, 88; Hicks, Henry, Lieutenant, for proceedings at Mevagissey, 88-94; Pollard, Lieutenant, for misconduct while in command of press tender, 94, 95; Almond, John, Holt, Henry, and Williams, Jacob, Dutch seamen, for desertion, 96; Leake, Andrew, Captain, for keeping false musters, 97, 98; Coffin, Isaac, Captain, for keeping false musters, 98-104; seamen of *Tigre*, for claiming right to plunder, 105; Hervey, John, Midshipman, sentenced for plundering, 105, 106; Rawlinson, Lieutenant, for plundering, 107; Jenkins, Master, for plundering, 107; Jones, Thomas, Lieutenant, for plundering, 107-113; Bury, Captain, injustice in misrating midshipman, 113; Bambridge, Peter, for ill-usage of prisoner, 113; Dodds, Henry, Lieutenant, for wounding Master of Danish vessel, 114; Deane, John, for mutiny, 115, 116; Lamshead,

- John, Samms, Edward, Ponnet, John, Evans, Thomas, for mutiny, 118-122; Beare, Midshipman, Melby, boatswain, and Moody, seaman, for mutiny, 122; Couchman, Lieutenant, for mutiny, 122; Murphy, Augustus, Midshipman, for plotting mutiny, 122-125; Gibson, Lieutenant, for not preventing mutiny, 125-127; crew of *Mary*, for mutiny, 128; sailors of *Egmont*, for mutiny, 129, 130; sailors of *Monica*, for mutiny, 131-136; Nelson, Robert, for mutiny, 137-140; Abadham, Master, for murder, 142, 143; Crosby, Lieutenant, for murder, 143, 144; Thickpenny, J., sailor, for murder, 145; Douglas, Stairs, Captain of Marines, for murder, 145, 146; Caynes, David, Butler, Edmund, seamen, for murder, 148-154; Cox, marine, for murder, 154, 155; Richardson, Andrew, seaman, for murder, 156, 157; Bruin, seaman, for murder, 157; Abbot, William, seaman, murder and desertion, 158; Douglas, Captain of Marines, for murder of Master, 159-161; Wooden, Captain, for loss of fireship, 163, 164; Palmer, George, Captain, for loss of fireship, 165-167; Shuldham, Captain, for loss of *Raisonable*, 168-170; Carkett, Captain, for loss of *Hussar*, 171; Everitt, Captain, for loss of *Solebay*, 172; Brereton, Captain of *Cumberland*, Legge, Captain of *Newcastle*, Vincent, Captain of *Weymouth*, for misconduct in action of 29th April 1758, 173-182; Collier, George, Lieutenant, for cowardice, 182-184; Pakenham, Thomas, Captain, for surrendering the *Crescent*, 185-188; Grant, Captain, for loss of xebec *Mediterranean*, 189; crew of cutter *Pigmy*, for loss of vessel, 190, 191; boy for playing truant, 195; Poulson, Henry, Johnson, William, seamen of *Hermione*, for mutiny, 195; boy included in prisoners tried for mutiny of *Hermione*, 195; Coffin, Isaac, Captain, for refusing to receive officers appointed by Rodney, 198-200; Campbell, John, Midshipman, for desertion, 200-202; Collingwood, for disobedience of orders, 205, 206.
- Dartmouth, Earl of, quoted, vi.
 Davis, Richard, acting Midshipman, murder by, xlvii.
 Deputy Judge Advocate, his function, vi.
 Dorchester, Lord (Guy Carleton), letter by quoted, 99, 100.
 Doughty, executed by Drake, xv.
 Drake, Sir Francis, his execution of Doughty, xv; his trial of William Borough, xix *et seq.*
- Elizabeth Bonaventure*, Drake's flag-ship, xix.
- Fireship, use and limitations of, 163.
 Fisher, George, Lieutenant, his career in Navy, 41, 42.
 Foreigners in Navy, 95.
 Foster, Philip, Deputy Judge Advocate, quoted for procedure, viii; on sentiments of Fleet in 1688-9, 9.
 Foster, Sir Michael, Recorder of Bristol, quoted, xlv.
- Golden Lion*, Borough's ship, xix *et seq.*
 Goodere, Samuel, Captain of *Ruby*, murders his brother, trial at Assizes, xlv *et seq.*
- Half Pay, introduction and progress of, xxx *note*.
 Herbert, Arthur; *see* Torrington.
- Impressment, how worked, 73 *et seq.*
 Inglis, Captain of *Belligueux*, his character, and dealing with a mutineer, 137 *et seq.*

- In-Letters, Secretary's, Reports of Courts Martial, v; number of, viii.
- Insanity, cruelty shown to, 95 *note*.
- Jackal*, cutter, carried off by mutineers, 125-127.
- Jennings, Thomas, Lieutenant, will not follow King James II, 8.
- Judge Advocate of the fleet, his office, xxiii.
- Kenyon, Attorney-General, on case of Lieutenant Osmond, xlv.
- Kirke, William, murderer, xlv.
- Laws of War; *see* Articles.
- Line of battle, meaning of, 174, 175.
- Mann, Sir Horace, quoted, vii.
- Marchaunt, Captain, ordered to command *Golden Lion*, xviii; deposed, xix.
- Marichurch, Isaac, misuse of his testimony by Drake, xxii.
- Mathews, Admiral, his bad writing, vii.
- Mevagissey, strange case of *Assault* at, 88 *et seq.*
- Midshipman, origin of rating, 24 *note*.
- Murder, number of cases of, 142 *et seq.*
- Mutiny, various meanings of, 115-117.
- Osmond, Lieutenant, case of, xlv.
- Palmer, George, Captain of fire-ship, quoted, 165.
- Palmer, J. L., Midshipman, killed by Davis, Richard, xlvii.
- Panmure, Mr, pilot, causes loss of *Raisable*, 168-170.
- Parker, Sir Hyde, brings two men to Court Martial, 52-55.
- Pilots, reasons for general employment of, 167, 168.
- Plunder, two meanings of, 104.
- Poole, Jonas, Captain of *Centurion*, presides over Court Martial, xxiv.
- Potts, Skipper of *Julius Caesar*, lampoons Captain Fielding, 81-85.
- Pulliblack, Lieutenant, commander of cutter *Pigmy*, his gallantry, 190, 191.
- Pye, Sir Thomas, Admiral, xlvii; *see also* Davis, Richard.
- Shales, Purser, does duty as lieutenant in action with French, 17, 18.
- Straits, meaning of, vi.
- Torrington, Lord, his command in Straits, vi; claims privilege of peerage, xxxi.
- Tucker, Richard, killed by Lieutenant Osmond, xlv.
- Wager*, wreck of, xxxiv.
- Wheeler, Captain, slandered by Jenkins, 2.
- Wilkinson, Lieutenant, reports mutiny in *Dolphin's* prize, 119.
- Women on board, 55 *et seq.*
- Wooden, Captain of fire-ship, quoted, 163, 164.
- York, Duke of, and Test Act, v; Lord High Admiral, xxvi.

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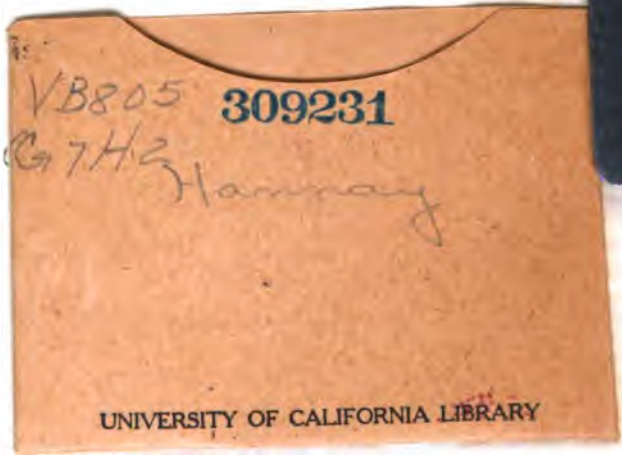


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